

RESOLUTION NO. 16-97

A RESOLUTION OF THE CITY OF FORT LAUDERDALE BROWARD COUNTY, FLORIDA, RESCINDING RESOLUTION NO. 16-63 RELATING TO THE IMPOSITION OF A ONE CENT INFRASTRUCTURE SALES SURTAX UPON VOTER APPROVAL; APPROVING A COMPROMISE SALES SURTAXES PROPOSAL BETWEEN THE PARTICIPATING BROWARD MUNICIPALITIES AND BROWARD COUNTY; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE THE TRANSPORTATION SYSTEM AND INFRASTRUCTURE SURTAXES INTERLOCAL AGREEMENT, ATTACHED AS EXHIBIT "A" AND INCORPORATED HEREIN; SUPPORTING THE COUNTY'S PLACEMENT OF A 30 YEAR ONE HALF-CENT INFRASTRUCTURE SALES SURTAX AND A 30 YEAR ONE-HALF CENT COUNTYWIDE TRANSPORTATION SYSTEM SALES SURTAX ON THE NOVEMBER 8, 2016 GENERAL ELECTION BALLOT IN ACCORDANCE WITH THE SURTAXES INTERLOCAL AGREEMENT AND SECTION 212.055, FLORIDA STATUTES; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, Section 212.055(2), Florida Statutes, authorizes the levy of a local government infrastructure sales surtax of 0.5% or 1% upon transactions occurring within Broward County that are taxable pursuant to Chapter 212, Florida Statutes, subject to approval by a majority of those voting in a referendum election; and

WHEREAS, in order to address urgent local government infrastructure needs, the City of Fort Lauderdale adopted Resolution No. 16-63 (the "Municipal Surtax Resolution") which imposed a 1% Local Government Infrastructure Sales Surtax subject to voter approval, and directed the Supervisor of Elections of Broward County to place the ballot language set forth in the Municipal Surtax Resolution on the November 8, 2016 general election ballot; and

WHEREAS, the governing bodies of municipalities representing over 94% of the County's population voted to approve similar uniform resolutions to place on the November 8, 2016 ballot, for consideration by the countywide electorate, a proposed infrastructure surtax levy of 1% utilizing the ballot language set forth in the Municipal Surtax Resolution (the "Initial Municipal Ballot Proposal"); and

WHEREAS, Section 212.055(1), Florida Statutes, authorizes the County to levy a Charter County and Regional Transportation System sales surtax of up to 1% upon transactions occurring within Broward County that are taxable pursuant to Chapter 212, Florida Statutes, also subject to approval by a majority of those voting in a referendum election; and

WHEREAS, on May 24, 2016, the County Commission voted to place on the November 8, 2016 ballot, for consideration by the countywide electorate, a proposed transportation surtax levy of 0.75% (the "Initial County Ballot Proposal"); and

WHEREAS, a concern has been raised that the combined potential levy of 1.75% may be perceived by interested stakeholders and the electorate as collectively more than required to presently address the most urgent transportation and infrastructure needs, thereby increasing the risk that the countywide electorate will reject the proposed levies, which would prevent the Broward municipalities and the County from adequately addressing the community's critical transportation and infrastructure needs; and

WHEREAS, in the spirit of compromise and collaboration, and to increase the likelihood that the countywide electorate will approve of the proposed levies, the City of Fort Lauderdale and the County have agreed to a proposal to modify the initially-proposed tax levies reducing each proposed levy to 0.5% so that the combined proposed levy is 1% instead of 1.75% (the "Compromise Proposal"); and

WHEREAS, the Broward municipalities and the County have negotiated a Transportation System and Infrastructure Surtaxes Interlocal Agreement, attached as Exhibit "A", which includes agreed upon ballot language for both .5% surtaxes and provides for the terms, conditions and implementation of the Compromise Proposal (the "Surtaxes Interlocal Agreement"); and

WHEREAS, in accordance with the Surtaxes Interlocal Agreement, the 0.5% levies and a brief general description of planned projects will be placed on the November 8, 2016 countywide election ballot (the "Ballot Measures"), and the Broward municipalities and the County have pledged to work to educate the electorate on the importance of the Ballot Measures; and

WHEREAS, the Surtaxes Interlocal Agreement provides for an independent Transportation and Infrastructure Surtax Oversight Board to be established to review proposed projects for consistency with applicable law and the Surtaxes Interlocal Agreement; and

WHEREAS, the City Commission desires to rescind the Initial Municipal Ballot Proposal, support the Compromise Proposal and approve and authorize the appropriate City officials to execute the Surtaxes Interlocal Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FORT LAUDERDALE, FLORIDA THAT:

SECTION 1. Legislative Findings/Recitals. The above recitals are hereby adopted by the City of Fort Lauderdale as its legislative findings relative to the subjects and matters set forth in this Resolution.

SECTION 2. Rescission of Initial Municipal Ballot Proposal. The City hereby rescinds the Municipal Surtax Resolution (Resolution No. 16-63), which imposed a 1% Local Government Infrastructure Surtax subject to voter approval, and directed the Broward County Supervisor of Election to place the 1% Infrastructure Surtax on the November 8, 2016 ballot in accordance with the Initial Municipal Ballot Proposal.

SECTION 3. Approval of Compromise Proposal. The City hereby approves the Compromise Proposal and supports the County's placement of a .5% Local Government Infrastructure Surtax and .5% Countywide Transportation System Surtax on the November 8, 2016 ballot in accordance with the Surtaxes Interlocal Agreement, attached as Exhibit "A".

SECTION 4. Approval of Surtaxes Interlocal Agreement. The Surtaxes Interlocal Agreement between the Broward municipalities and the County, attached as Exhibit "A", is hereby approved.

SECTION 5. Authorization to Execute Surtaxes Interlocal Agreement. The appropriate City officials are authorized to execute the Surtaxes Interlocal Agreement, attached as Exhibit "A", together with such non-substantive changes as are acceptable to the City Manager and approved as to form and legal sufficiency by the City Attorney.

SECTION 6. Pledge of Support. To the fullest extent permissible under Florida law, the City pledges to publicly support the Compromise Proposal and both Ballot Measures in accordance with the terms of the Surtaxes Interlocal Agreement.

SECTION 7. Distribution of Resolution. The City Clerk is directed to distribute this Resolution to the Board of County Commissioners for Broward County, the Broward County Supervisor of Elections and the Broward County Attorney's Office.

SECTION 8. Implementing Actions. The City Manager and the City Attorney are hereby authorized to take any actions necessary to implement the aims of this Resolution.

SECTION 9. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, it is the intent of the City Commission that such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application and, to this end, the provisions of this Resolution are declared severable.

SECTION 10. Conflicts. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 11. Effectiveness and Effective Date. This Resolution shall take effect immediately upon approval of the Surtaxes Interlocal Agreement by the County and the governing bodies of the municipalities representing at least a majority of the population of Broward County; provided however that if the Surtaxes Interlocal Agreement is not approved by the County and the governing bodies of the municipalities representing at least a majority of the population of Broward County by the end of the day on June 24, 2016, this Resolution shall be void and of no force or effect.

Approved this the 24th day of June, 2016.

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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

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City Clerk  
JEFFREY A. MODARELLI

## EXHIBIT "A"

### TRANSPORTATION SYSTEM AND INFRASTRUCTURE SURTAXES INTERLOCAL AGREEMENT

This Transportation System and Infrastructure Surtaxes Interlocal Agreement (the "Agreement") is entered into by and between Broward County, a political subdivision of the State of Florida (the "County"), and the municipalities that formally approve this Agreement consistent with its provisions and execute and return to the County a signature page bearing the above legend, each of which is a municipal corporation within Broward County and existing under the laws of the State of Florida (the "Municipalities").

#### Recitals

- A. Section 212.055(1), Florida Statutes, authorizes the County to levy a discretionary sales surtax of up to 1% for transportation system purposes, subject to approval by a majority of those voting in a referendum election.
- B. Section 212.055(2), Florida Statutes, authorizes the levy of a discretionary sales surtax of 0.5% or 1% for local government infrastructure purposes, also subject to approval by a majority of those voting in a referendum election.
- C. Because of the urgent need for transportation system improvements, on May 24, 2016, the County Commission voted to place on the November 8, 2016, ballot, for consideration by the countywide electorate, a proposed transportation surtax levy of 0.75% (the "Initial County Ballot Proposal").
- D. Because of urgent local government infrastructure needs, municipalities representing a majority of the County's population voted to place on the November 8, 2016, ballot, for consideration by the countywide electorate, a proposed infrastructure surtax levy of 1% (the "Initial Municipal Ballot Proposal").
- E. The County Commission and the governing bodies of the Municipalities have determined that the combined potential levy of 1.75% may be perceived by interested stakeholders and the electorate as collectively more than required to presently address the most urgent transportation and infrastructure needs, thereby increasing the risk that the countywide electorate will reject the proposed levies, which would prevent the County and Municipalities from adequately addressing the community's critical transportation and infrastructure needs.
- F. In the spirit of compromise and collaboration, and to increase the likelihood that the countywide electorate will approve of the proposed levies, the County and the Municipalities, working together to protect the health, safety, and welfare of their residents and visitors, have agreed to modify the initially-proposed tax levies, including by reducing each levy to 0.5% so that the combined proposed levy is 1% instead of 1.75%.
- G. Such levies and a brief description of planned projects will be placed on the November 8, 2016, countywide election ballot (the "Ballot Measures"), and the County and Municipalities have pledged to work to educate the electorate on the importance of the Ballot Measures.

H. The County Commission enters into this Agreement after having made the following findings:

1. Without a dedication of substantial new revenues, the existing transit system 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 October 27, 2015, and presented to the Broward Metropolitan Planning Organization (“MPO”) on September 10, 2015, 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. This is caused in part by expected diminishment in gas tax revenues, which have traditionally substantially contributed to the County’s transit operations;
3. The proposed transportation surtax would further the County Commission’s 2016-2020 Strategic Plan, the County Commission’s declared value of “cooperatively delivering an efficient and accessible regional intermodal transportation network,” and the County Commission’s goal to “develop, market and achieve passage of a transit surtax to support a variety of long-term, regional transit and infrastructural needs”;
4. The proposed transportation surtax would enable the advancement of transportation and premium transit projects presently identified in the MPO’s Commitment 2040 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 due to a lack of dedicated revenue for operations and maintenance; and
5. 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 business that would have otherwise been 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 opportunities to advance the mobility goals of the region.

I. The Municipalities, through their governing bodies, enter into this Agreement after having made the following findings:

1. The Municipalities are presently without sufficient revenues to adequately fund the infrastructure needs within the County and are without sufficient fiscal resources to adequately fund infrastructure and equipment to address transportation, mobility, and safety needs to benefit the local economy and the citizens of Broward County and the Municipalities;
2. The provision of adequate and efficient infrastructure facilities upon which the public depends on a day to day basis is a matter of great public concern to the citizens of Broward County and the Municipalities; and
3. The moneys received from the infrastructure surtax may be utilized to finance, plan, construct, renovate and improve needed infrastructure, provide public safety vehicles, equipment and infrastructure, acquire land for public recreation, conservation or the protection of natural resources, improve infrastructure to address transportation and safety needs to benefit the local economy and the citizens of Broward County and of the Municipalities within Broward County, and such infrastructure projects will be for the use and benefit of the citizens of Broward County and of the Municipalities.

J. To provide for enhanced accountability, objectivity, transparency, and efficiency in the expenditure of surtax proceeds, the parties desire that an independent Transportation and Infrastructure Surtax Oversight Board be established to review proposed projects for consistency with applicable law and this Agreement.

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

#### Agreement

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

**II. Condition Precedent to Effectiveness of Agreement.** This Agreement shall be effective only if the following occur before noon on June 24, 2016 (the parties agree that the County may unilaterally extend this deadline if the Broward County Supervisor of Elections ("SOE") confirms in writing prior to that time that the deadline for withdrawing the Initial County Ballot Proposal and Initial Municipal Ballot Proposal, and deadline for submitting the new Ballot Measures, is later than noon on June 24, 2016):

- A. Municipalities representing more than fifty percent (50%) of the County's total population have taken formal action to approve this Agreement, which includes the Ballot Measures;
- B. Municipalities representing more than fifty percent (50%) of the County's total population have taken formal action to irrevocably withdraw their prior direction to the SOE to place the Initial Municipal Ballot Proposal on the November 8, 2016, general election ballot; and

- C. Documentation confirming that the above two requirements have been met is emailed to the Broward County Attorney and SOE.

**III. Ballot Measures.** The terms of this Agreement shall be interpreted and implemented in accordance with the Ballot Measures, which are attached hereto as Exhibit 1. Once this Agreement becomes effective (as provided above), the Ballot Measures shall be timely forwarded by the County to the SOE for placement on the November 8, 2016, general election ballot. No other ballot measure regarding either of these surtaxes, or any other surtax, shall be placed on the ballot by any party hereto; however, any party may place other measures on the ballot that are unrelated to either surtax or to projects to be funded thereby. Concurrently with forwarding the Ballot Measures to the SOE, the County shall withdraw its direction to the SOE to place the Initial County Ballot Proposal on the November 8, 2016, general election ballot.

**IV. Entitlement to Surtax Proceeds.**

- A. All transportation surtax proceeds remitted by the Florida Department of Revenue ("FDOR") as required by law (less any administrative or other costs lawfully deducted by FDOR) are hereby defined as the "Transportation Surtax Proceeds." All infrastructure surtax proceeds remitted by FDOR as required by law (less any administrative or other costs lawfully deducted by FDOR) are hereby defined as the "Infrastructure Surtax Proceeds." Transportation Surtax Proceeds and Infrastructure Surtax Proceeds may be collectively referred to as "Surtax Proceeds."
- B. Throughout the term of this Agreement, the County shall be entitled to receive directly from FDOR one hundred percent (100%) of the Transportation Surtax Proceeds, and shall be entitled to receive the percentage of Infrastructure Surtax Proceeds allocated to the unincorporated area based on the population calculation referenced below.
- C. The Municipalities that have joined this Agreement (including the unincorporated area) shall collectively be entitled to receive directly from FDOR one hundred percent (100%) of the Infrastructure Surtax Proceeds that were paid by taxpayers through December 31, 2036 (some of which will be remitted by FDOR in the first calendar quarter of 2037). Infrastructure Surtax Proceeds paid by taxpayers from January 1, 2037, through December 31, 2046, shall be allocated as follows: The Municipalities that have joined this Agreement (including the unincorporated area) shall collectively be entitled to receive directly from FDOR sixty percent (60%) of such Infrastructure Surtax Proceeds, and the County shall be entitled to receive directly from FDOR forty percent (40%) of such Infrastructure Surtax Proceeds.
- D. All Municipalities that have joined this Agreement (and have not withdrawn from participation in this Agreement) shall be entitled to receive distributions of their *pro rata* shares of the Infrastructure Surtax Proceeds (as allocated in the preceding paragraph), based on the population calculation as provided below. A municipality shall be deemed to have joined the Agreement as of the date it provides to the



County a copy of a validly-executed signature page and a copy of a resolution documenting that the municipality has taken formal action to join the Agreement.

- E. For purposes of calculating each Municipality's and the County's (on behalf of the unincorporated area) *pro rata* share of Infrastructure Surtax Proceeds, population figures and percentages shall be adjusted annually based on the figures contained in the document referred to as the "Florida Population Estimates for Counties and Municipalities," published on an annual basis by the Office of Economic and Demographic Research for the State of Florida. Allocations during each calendar year during the term of this Agreement shall be based on the "Florida Population Estimates for Counties and Municipalities" in effect on October 1 of the preceding year. The parties agree to submit to FDOR the necessary documentation to support the *pro rata* allocations to the County and the Municipalities during the term of this Agreement.
- F. Municipalities that have joined this Agreement prior to October 1, 2016, shall be entitled to receive their *pro rata* shares of Infrastructure Surtax Proceeds upon the commencement of distribution by FDOR in 2017. Municipalities that do not join the Agreement by October 1, 2016, but join prior to October 1, 2017, shall be entitled to receive their *pro rata* shares of only the Infrastructure Surtax Proceeds distributed by FDOR on or after January 1, 2018. Any municipality that has not joined the Agreement by October 1, 2017, shall be entitled to join in January through September 30 of 2018, or January through September 30 of any subsequent year, in which event it shall be entitled to receive its *pro rata* share of only the Infrastructure Surtax Proceeds distributed by FDOR beginning January 1 of the following year.
- G. By executing this Agreement, the County has joined it both in its capacity as a regional government and on behalf of the unincorporated area of the County for purposes of the unincorporated area's entitlement to its *pro rata* share of Infrastructure Surtax Proceeds.
- H. All Infrastructure Surtax Proceeds that would have been distributed to municipalities but for those municipalities either (i) not having become parties to the Agreement, (ii) having become parties but not yet being entitled to receive a distribution, or (iii) having withdrawn from being a party to the Agreement shall be distributed, *pro rata*, to those Municipalities (including on behalf of the unincorporated area) that are parties to the Agreement and entitled to a distribution at the time of the relevant distribution.

**V. Oversight Board.**

- A. Establishment. The parties hereby establish an independent "Transportation and Infrastructure Surtax Oversight Board" (the "Oversight Board"), which shall be comprised of the following nine (9) members, who shall be uncompensated, with at least seven (7) of the nine (9) members being Broward County residents:

1. One former elected official;
  2. One former city or county manager;
  3. One Certified Public Accountant;
  4. One member of The Florida Bar;
  5. One finance professional;
  6. One urban planning or land use professional;
  7. One engineering or construction management professional;
  8. One professional architect; and
  9. One professional environmental scientist.
- B. No member of the Oversight Board shall, at any time during his or her 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.
- C. The following five (5) persons (collectively, the “Appointing Authority”), none of whom may be an elected official, shall, based on procedures established by majority vote, make nominations for members of the Oversight Board and shall, also by majority vote, appoint such members on or before January 15, 2017 (any designee may be removed and replaced at any time by the designor) (no member of the Appointing Authority may be a member of the Oversight Board):
1. The designee of the President of Nova Southeastern University or, if no such designation is made, the designee (by majority vote) of the four (4) other members of the Appointing Authority;
  2. The designee of the Broward Workshop;
  3. The designee of the Broward County Council of Chambers (of Commerce);
  4. The joint designee of the Broward County Auditor and Broward League of Cities’ Auditor; and
  5. The Director of the Florida Atlantic University Center for Environmental Studies, or such person’s designee.
- D. Term of Oversight Board Members. Oversight Board members shall serve four-year terms commencing on the date a majority of members have first been appointed. Members 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 fill a vacancy shall serve for the balance of the vacated term. The Appointing Authority shall meet as required to appoint or remove members.
- E. Oversight Board Meetings. The Oversight Board shall meet at least quarterly throughout the term of the Agreement. The members shall elect a chairperson to preside over meetings. The Oversight Board shall establish its own rules of procedure for conducting its meetings.

- F. Staffing. The Oversight Board shall retain such staff as it reasonably determines is necessary for it to efficiently perform its functions, including administrative staff, consultants, and legal counsel. No administrative staff, consultants, or legal counsel to the Oversight Board shall 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.
- G. The annual costs of the Oversight Board, including for administrative staff, legal counsel, and consultants, shall be paid fifty percent (50%) by the County and fifty percent (50%) by Municipalities that have joined this Agreement and that are entitled to any distribution during the applicable fiscal year, with each Municipality's (and the unincorporated area's) share being the same as its share of the Infrastructure Surtax Proceeds during the applicable year (the "Municipal Contribution"). The Oversight Board shall provide an annual budget to the County and Municipalities. The annual budget shall not exceed one-half of one percent (0.5%) of the sum of the Transportation Surtax Proceeds and the Infrastructure Surtax Proceeds from the prior year, unless it is approved by the County and Municipalities representing a majority of the population of Municipalities who are parties to the Agreement. Notwithstanding the prior sentence, the County and Municipalities representing a majority of the population of Municipalities who are parties to the Agreement shall agree on an Oversight Board budget for the first partial year, which shall cover the cost of the Oversight Board's activities through September 30, 2017. Subsequent annual budgets, which shall cover October 1 of the applicable year through September 30 of the following year, shall be provided by the Oversight Board to the County and Municipalities by June 1 of each year. The County and Municipalities shall pay to the Oversight Board their *pro rata* shares of the expenses by April 15, 2017 (to cover the period through September 30, 2017) and by October 1 of 2017 and each subsequent year.
- H. Compliance with Dispute Resolution Requirements. The Oversight Board shall comply with the dispute resolution requirements stated in Section IX below.
- I. Project Applications. The Oversight Board shall develop standard form project applications which shall be completed and submitted by the applicant in connection with a request for project approval. The application forms shall, at a minimum, meet the requirements of this Agreement.
- J. Project Oversight. All approved projects shall be subject to the Oversight Board's review for the duration of the project and thereafter for audit purposes. The Oversight Board may issue annual reports on the performance of ongoing projects and may provide recommendations for any proposed performance improvements. All parties agree to fully cooperate with the Oversight Board and to provide timely and accurate responses to Oversight Board requests for information.
- K. The Oversight Board shall be disbanded when all obligations under this Agreement have been performed or otherwise met.

**VI. Approval of Projects.** Surtax Proceeds may only be expended on projects approved by the Oversight Board.

- A. Minimum Requirements for Projects. No project shall be approved by the Oversight Board unless and until the Oversight Board determines in writing that:
1. The project, as described in the project application, is permissible under the applicable subsection of Section 212.055, Florida Statutes; and
  2. The applicant has submitted all required external audits pursuant to Section VII.C. below (this condition shall not be applicable until after the first external audit is required to be submitted) 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.
- B. Additional Requirements for Projects that Involve Bond Financing. Additionally, no project that involves bond financing (including bond issuance, refinancing, or repayment) shall be approved by the Oversight Board unless and until it receives:
1. A written opinion from qualified bond counsel retained by the project applicant stating that the proposed expenditure of Surtax Proceeds (i) complies with all applicable legal requirements and (ii) is not inconsistent with any existing bond covenants to which the applicant has obligated itself. If bond counsel determines that the proposed project is only partially fundable with Surtax Proceeds pursuant to the applicable subsection of Section 212.055, the written opinion shall identify those portions of the project fundable with Surtax Proceeds and, if practicable, shall state the total dollar value of those portions; 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. Timing and Content of Oversight Board Decision. If the Oversight Board determines that the project meets all of the above-referenced requirements (as applicable, depending on whether bond financing is involved), it shall approve the project and shall send written notice of such approval to the applicant. If an approved project is only partially fundable with Surtax Proceeds pursuant to Section 212.055, the Oversight Board's written approval shall identify those portions of the project fundable with Surtax Proceeds. 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 the Oversight Board determines that the project does not meet one or more of the above-referenced requirements, the Oversight Board shall reject the project and shall send written notice thereof to the applicant. Such notice shall specify the reason(s) 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 ninety (90) days after its receipt of a complete project application.

- D. Except as would otherwise be prohibited by applicable law or by the terms of any grant or other agreement, the Municipalities and the County agree that Surtax Proceeds may be used to fund approved projects in whole or in part to the full extent such funding is consistent with the applicable subsection of Section 212.055, Florida Statutes, including any approved project that has commenced prior to the initial levy of the applicable surtax, and may be used to fund joint projects between or among parties to this Agreement.

## **VII. Maintenance and Expenditure of Surtax Proceeds.**

- A. No Surtax Proceeds may be expended except to pay valid expenses of a project approved by the Oversight Board. Prior to expenditure, each Municipality and the County agree to maintain all Surtax Proceeds received by them in a segregated trust fund, with no such proceeds (or any interest earned thereon) being comingled with any other funds (including any other transit, transportation, or infrastructure funds). Each party shall create and maintain sufficient records, including invoices and evidence of payment, to permit an external auditor to efficiently identify and document, both generally and on a project-specific basis, all Surtax Proceeds received by the party, the current balance of such proceeds in its segregated trust fund account (including interest earned thereon, if any), and each expenditure of such funds.
- B. Each party shall 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 project approval or written determination.
- C. Annual Audits. Each party shall retain an external, independent certified public accountant to perform and complete an annual audit of each of the party's approved projects and of all Surtax Proceeds received, maintained, and expended by that party. Each annual audit report shall meet the requirements stated on Exhibit 2. Annual audits shall be performed for each fiscal year in which the party has received, expended, or retained any Surtax Proceeds. The audit may address only the amounts received, maintained, and expended pursuant to this Agreement, or the audit may be part of the party's annual financial audit prepared pursuant to Section 218.39, Florida Statutes, so long as the audit reflects separately the receipt, maintenance, and expenditure of that party's Surtax Proceeds (with the required detail). A certified copy of the completed external audit shall be provided to the Oversight Board by the earlier of nine (9) months 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, or within such additional time as the Oversight Board grants in writing if the party has commenced a cure within such ninety-day period, the Oversight Board shall issue a written report documenting, with specificity, each such violation, and shall provide a copy thereof to each party, to the Broward Office of Inspector General (“OIG”), and to FDOR.

- D. Commitment to Spend Portion of Infrastructure Surtax Proceeds on Certain Projects. On a countywide, cumulative basis, the Municipalities shall have a goal to spend between thirteen percent (13%) and twenty-five percent (25%) of the Infrastructure Surtax Proceeds they receive on transportation, transit, and mobility projects, which are hereby defined to mean projects that (i) facilitate the movement of people and goods from place to place, and (ii) directly or indirectly connect to or directly benefit the regional transportation system.

**VIII. Limitation On Expenditure of Surtax Proceeds Regarding Projects that May Be Funded Only in Part with Surtax Proceeds.** Notwithstanding anything stated in this Agreement to the contrary, any expenditure of Surtax Proceeds in connection with an approved project shall be limited to the amount determined in the project approval or bond counsel opinion, as applicable (or the lesser of the two amounts if both are applicable), to be properly fundable pursuant to the applicable subsection of Section 212.055, Florida Statutes, and this Agreement.

**IX. Resolution of Disputes.** If any party alleges a breach of this Agreement, or 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 participate in nonbinding arbitration. If the dispute remains unsettled after the nonbinding arbitration, the dispute shall be resolved by filing an appropriate legal action in the 17<sup>th</sup> Judicial Circuit Court in and for Broward County, Florida. The parties hereby agree that each party to this Agreement has standing to sue to enforce compliance with any of the terms of the Agreement. Nothing in this paragraph modifies the obligation of any party to comply with the requirements of Chapter 164, Florida Statutes, to the extent applicable.

**X. Term of Agreement.** This Agreement shall remain in full force and effect until all Surtax Proceeds received pursuant hereto have been expended and thereafter until ninety (90) days after the Oversight Board has completed its review of each party’s final external audit. In the event both Ballot Measures are not approved by majority vote on November 8, 2016, this Agreement shall be null and void *ab initio*.

**XI. No Impact on Future Levies.** Nothing in this Agreement shall impact in any way, whatsoever, any future ballot question (placed on a ballot in 2017 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.

**XII. Subsequent Invalidation of Approved Ballot Measure; Joint Litigation Defense.**

- A. If both Ballot Measures are approved by a majority of the voters countywide, and one of the two measures is subsequently invalidated by a court of competent jurisdiction (through any available appeals or the lapsing of any right to appeal), the parties agree that the levy on the surviving Ballot Measure shall terminate immediately (subject to any previously-codified FDOR requirements regarding the timing of such termination). If the agreement embodied in the preceding sentence is judicially determined (including through any available appeals or the lapsing of any right to appeal) to be unenforceable, the parties agree that the County shall receive fifty percent (50%) of the proceeds of the levy of the surviving Ballot Measure and that the other fifty percent (50%) shall be distributed *pro rata* to the Municipalities that are parties to the Agreement (including a share for the unincorporated area); provided that the expenditure of those proceeds by each party shall be consistent with the surviving Ballot Measure, shall meet the requirements of this Agreement applicable to the surviving Surtax Proceeds (infrastructure or transportation), and shall meet all legal requirements, including those imposed under Section 212.055, Florida Statutes.
- B. All parties hereto agree not to institute or in any way support any challenge to either Ballot Measure. If one or both of the Ballot Measures is/are challenged, whether pre-election or after said Ballot Measures are approved by a majority of the voters countywide, the parties hereto agree to provide a joint litigation defense through all trial court and appellate court proceedings, and further agree to exert their best efforts to sustain the challenged Ballot Measure(s). The County shall pay fifty percent (50%) of the litigation costs, and shall supply County-funded counsel, and the Municipalities shall pay the remaining fifty percent (50%) of litigation costs (the County shall pay the portion allocable to the unincorporated area) and shall supply litigation counsel funded by the Municipalities.

**XIII. Withdrawal.** Any Municipality may withdraw from this Agreement on or before October 1 of any year, to be effective on January 1 of the following calendar year, provided that the Municipality is in compliance with all terms of this Agreement. The withdrawing Municipality shall still be required to comply with any and all ongoing reporting, auditing, and other requirements contained in this Agreement.

**XIV. Pledge of Support.** To the full extent permissible under applicable law, all parties pledge to support both Ballot Measures. The parties also agree to work cooperatively to enhance the regional transportation system. Nothing stated in this paragraph shall be interpreted to impede the free speech rights of any individual.

**XV. Amendment.** Except as to provisions that would change the amount or percentage of Surtax Proceeds distributed to any party, this Agreement may be amended by a written document formally approved by the County and Municipalities that (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. Any amendment that would change the amount

or percentage of Surtax Proceeds distributed to any party must be approved by all parties to this Agreement.

**XVI. 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.**

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

**XVIII. 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.

**XIX. 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: <a href="mailto:bhenry@broward.org">bhenry@broward.org</a>
With a copy to:	County Attorney Office of the County Attorney 115 S. Andrews Avenue, Room 423 Fort Lauderdale, FL 33301 Email: <a href="mailto:jacoffey@broward.org">jacoffey@broward.org</a>
As to Municipality:	Manager/Administrator Name, address, and email provided on signature page
With a copy to:	Municipal Attorney Name, address, and email provided on signature page

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 paragraph.



**XX. 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.

**XXI. 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.

**XXII. 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.

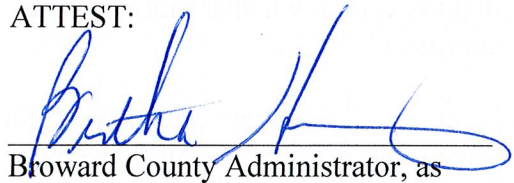
**XXIII. Severability.** Except as otherwise provided in Section XII, in the event any portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective and the parties agree to negotiate in good faith to modify the invalidated portion of the Agreement in a manner designed to effectuate the original intent of the parties.

**XXIV. 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.

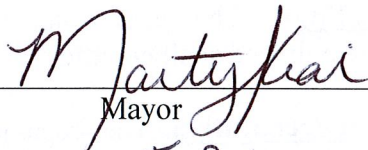
IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY, signing by and through its Mayor or Vice-Mayor, duly authorized to execute same by Board action on the 22<sup>nd</sup> day of June, 2016, and the Municipality, signing by and through its authorized officer or official, duly authorized to execute same by official action taken on the date identified on its signature page.

**BROWARD COUNTY**

ATTEST:

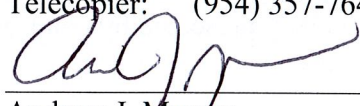
  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

By   
Mayor  
22<sup>nd</sup> day of June, 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  
22<sup>nd</sup> day of June, 2016

Signature Page for Municipality

**TRANSPORTATION SYSTEM AND INFRASTRUCTURE SURTAXES  
INTERLOCAL AGREEMENT**

**Each Municipality to supply its own valid signature page (to include contact information for notice purposes and date of formal action approving the Agreement)**

**Exhibit 1**

**FUNDING FOR COUNTYWIDE TRANSPORTATION SYSTEM  
THROUGH LEVY OF A ONE-HALF PERCENT SALES SURTAX**

Shall transportation improvements to reduce traffic congestion, develop rail and enhanced bus systems, improve roads and signalization, and develop safe sidewalks and bicycle pathways, be funded by levying a 30-year, 0.5% sales surtax, paid by residents and visitors, with all proceeds held in trust, expenditures overseen by an independent oversight board, and this levy effective only if the infrastructure surtax ballot question immediately below is voter-approved and in effect?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

**FUNDING FOR LOCAL GOVERNMENT INFRASTRUCTURE  
PROJECTS THROUGH LEVY OF A ONE-HALF PERCENT SALES SURTAX**

Shall construction and improvement of public buildings, facilities and roads, transportation projects, pedestrian safety projects, purchase of equipment and public safety vehicles, and recreation/conservation land acquisition, be funded by levying a 30-year, 0.5% sales surtax, paid by residents and visitors, with all proceeds held in trust, expenditures overseen by an independent oversight board, and this levy effective only if the transportation surtax ballot question immediately above is voter-approved and in effect?

\_\_\_\_\_ FOR THE 0.5 CENT SALES TAX

\_\_\_\_\_ AGAINST THE 0.5 CENT SALES TAX

## **Exhibit 2 - Reporting Requirements**

The County and each Municipality shall submit to the Oversight Board an annual detailed report of the progress made in carrying out the projects funded through the Surtaxes. The report shall be audited and contain sufficient information for the Oversight Board to determine if the project expenditures conform to the interlocal agreement (ILA) and applicable law. In this regard, the report must include cumulative financial information for each individual project undertaken pursuant to the ILA.

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, including the expenditures on those project components that meet the definition of TTM Project;
- 4) the expenditures for the project for the current report year, including the expenditures on those project components that meet the definition of TTM Project; and
- 5) the total cumulative expenditures for the project as of the end of the current year being reported, including the expenditures on those project components that meet the definition of TTM Project.

**Section Two** presents the Statement of Revenue, Expenditures and Changes in Fund Balance for the separate account/fund established for Surtax funds received pursuant to the ILA, 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 non-compliance with the ILA 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 1: Project Expenditures (to include detail on TTM Project components of each approved project)**

Description Project	Project Budget	Expenditures Current through Prior FY Expenditures	Cumulative Expenditures
Project 1			
	(Show detail of expenditures by budget line item)		
Project 2			
	(Show detail of expenditures by budget line item)		
Total Expenditures		\$1,000,000	

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

Revenues:

Surtax Receipts	\$ #,###,###
Other	#,###,###
Interest	<u>#,###</u>
Total Revenues	<u>\$ #,###,###</u>

Project/Activity Expenditures (total from Section I) \$1,000,000

Administrative Costs":

Salaries	###,###
Contractual Services	###,###
Capital Outlay	<u>###,###</u>
Total Administrative Costs	<u>###,###</u>

Debt Service\*\*:

Principal	###,###
Interest	<u>###,###</u>
Total Debt Service	<u>###,###</u>

Other Expenditures ###,###

Total Expenditures ###,###

Excess of Revenues Over Expenditures ##,###

Fund Balance October 1 ###,###

Fund Balance September 30 ###,###

**Section III: Balance Sheet**

Assets (in detail)	<u>\$ ##,###,###</u>
Liabilities and Fund Balances (in detail)	<u>\$ ##,###,###</u>