


COMMISSION AGENDA

6.3.14 #22

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: Recommendation to Approve the Transit Surtax Interlocal Agreement with
the Pinellas Suncoast Transit Authority

DATE: June 3, 2014

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE THE ATTACHED TRANSIT SURTAX INTERLOCAL AGREEMENT BETWEEN PINELLAS COUNTY AND THE PINELLAS SUNCOAST TRANSIT AUTHORITY.

DISCUSSION: The Board adopted Ordinance No. 13-34 on December 10, 2013, which levies the Charter County and Regional Transportation Surtax ("Surtax") at the rate of one percent (1%) subject to referendum approval. That referendum is scheduled for November 4, 2014. The intent of the Board, as expressed both in Resolution No. 13-19 and Ordinance No. 13-34, in placing the referendum question on the ballot is to provide a funding source for countywide transportation projects, specifically those outlined in the Greenlight Pinellas Plan.

The Greenlight Pinellas Plan ("Plan") was developed by the Pinellas Suncoast Transit Authority ("PSTA"), a countywide transportation authority created by special act of the Legislature. The Plan calls for the development, construction, and operation of public transit benefitting Pinellas County, including an expanded bus system with bus rapid transit, increased frequency and extended hours, and local passenger rail and regional connections. The Plan calls for funding of this transit system with proceeds collected through the Surtax.

The interlocal agreement before the Board for action is between the County and PSTA, and provides for distribution of Surtax proceeds received by the County from the Department of Revenue to the PSTA. In addition to distributing the funds, the interlocal:

- Provides that the County can withhold distribution of the Surtax proceeds and/or reduce the Surtax levy if PSTA exercises its ad valorem taxing authority
- Allows PSTA to pledge the Surtax proceeds to secure any debt or other obligations incurred by PSTA for its Greenlight Plan
- Provides for the reduction and/or termination of the Surtax upon the occurrence of certain defined events
- Requires County consent in order for PSTA to undertake certain defined activities
- Provides reimbursement to the County for costs incurred in support of the Greenlight Plan
- Sets forth a schedule of critical milestones for Greenlight Plan

County staff has collaborated with PSTA staff over the last several months to develop the interlocal attached to this memo. It is recommended that the Board approve the interlocal, authorize the Chair to sign, and transmit the interlocal to the PSTA for its approval.

JLB:MJW:sme

Attachment

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**GREENLIGHT PINELLAS TRANSIT SURTAX
INTERLOCAL AGREEMENT**

THIS GREENLIGHT PINELLAS TRANSIT SURTAX INTERLOCAL AGREEMENT ("Agreement") is made and entered into this _____ day of June 2014, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County," and the PINELLAS SUNCOAST TRANSIT AUTHORITY, an independent special district created by Chapter 2000-424, Laws of Florida, as amended, and a transportation authority for purposes of Section 212.055(1), Florida Statutes, hereinafter referred to as "PSTA."

RECITALS:

WHEREAS, Section 212.055(1), Florida Statutes, authorizes the County to impose a Charter County and Regional Transportation System Surtax ("Surtax") of up to one percent (1%) throughout the County, subject to referendum approval, to fund countywide transportation projects; and

WHEREAS, the County's Board of County Commissioners adopted Ordinance No. 13-34 on December 10, 2013, levying the Surtax subject to elector approval at a rate of one percent; establishing the effective date of the Surtax; providing for administration, collection, and enforcement of the Surtax; providing for the distribution, use and financial management of Surtax proceeds; calling for a referendum election for approval of imposition of the Surtax on November 4, 2014 (the "Surtax Referendum"); and providing a ballot title and summary of the proposed referendum question (the "Ordinance"); and

WHEREAS, pursuant to Chapter 2000-424, Laws of Florida, as amended ("Special Act"), PSTA has the authority to plan, develop, improve, construct, maintain, operate, and finance a public transit system, as that term is defined therein; and

WHEREAS, PSTA has developed a plan for the development, improvement, construction, equipping, operation, maintenance and financing of public transit benefitting the County including an expanded bus system with bus rapid transit, increased frequency and extended hours, and local passenger rail and regional connections, which is commonly referred to as the "Greenlight Pinellas Plan;" and

WHEREAS, pursuant to Chapter 163, Florida Statutes, counties, cities, public authorities, and other political subdivisions are authorized to enter into interlocal agreements among and between themselves in order to make the most efficient use of their powers and enabling them to cooperate with other governmental entities; and

WHEREAS, the County and PSTA desire to equitably determine and to contract and provide herein the manner in which the proceeds from the Surtax shall be distributed to PSTA and the use to which those proceeds may be made by PSTA.

NOW, THEREFORE, in consideration of the mutual covenants of this Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and PSTA agree, each with the other, as follows:

SECTION 1. CONDITION PRECEDENT. This Agreement shall be effective upon execution by the parties and approval of the Surtax by the voters of the County at the Surtax Referendum ("Effective Date").

SECTION 2. DEFINITIONS. As used herein, the following terms or phrases shall have the meaning ascribed below:

(A) *Agreement* shall mean this Interlocal Agreement, as amended or supplemented from time to time.

(B) *Business Day* shall mean any day other than a Saturday or Sunday or legal holiday or a day on which the principal office of the County or PSTA is closed.

(C) *Change in Law* shall mean the enactment, adoption, promulgation, modification or repeal, after the Effective Date, of any federal or state law that: (i) substantially and materially limits PSTA's delivery of transit or transportation services described in PSTA's Greenlight Plan; or (ii) substantially and materially limits the County's performance of its obligations pursuant to Section 3 herein; or (iii) invalidates or terminates the levy of the Surtax by the County; provided, however, a "Change in Law" shall not have been deemed to have occurred hereunder if PSTA shall be diligently prosecuting a lawsuit challenging the legality of such enactment, adoption, promulgation, modification or repeal, including participation in any related appeals.

(D) *Clerk* shall mean the Pinellas County Clerk of the Circuit Court and Comptroller of Pinellas County, Florida.

(E) *County Infrastructure* shall mean the County-owned assets generally described in Exhibit B attached hereto as that Exhibit may be amended from time to time in order to include assets that may not exist as of the effective date of this Agreement.

(F) *Department* shall mean the Florida Department of Revenue.

(G) *Fiscal Year or FY* shall mean October 1 through and including the following September 30.

(H) *Force Majeure* shall mean a Change in Law or any other act, event or condition that prevents either Party from substantially and materially being able to perform the applicable Party's obligations under this Agreement, to the extent such act, event or condition is due to circumstances beyond the reasonable control of the Party asserting a Force Majeure as justification for being prevented from performing such obligations; provided, however, such act, event or condition is not the result of such asserting Party's failure to perform its obligations hereunder in accordance with the terms and conditions of this Agreement.

(I) *Milestone Schedule* shall mean the schedule of milestones attached hereto as Exhibit A, as the same may be amended and supplemented from time to time.

(J) *PSTA's Greenlight Plan* shall mean PSTA's plan, including the Greenlight Pinellas Plan, the Community Bus Plan, the Pinellas Alternatives Analysis, the Greenlight Pinellas Financial Plan, and the Light Rail Station Development Concepts, as filed with the Clerk as of the date hereof, all of which were developed and approved by PSTA, that addresses the planning, development, improvement, construction, equipping, operation, maintenance and financing of local passenger rail and regional connections and/or an expanded bus system with bus rapid transit, increased frequency and extended hours, as the same may be amended and supplemented from time to time subject to the provisions of Section 10 hereof.

(K) *Party* and *Parties* shall mean the local governments that have entered into this Agreement, either singularly or collectively.

(L) *Surtax* shall mean the one percent (1%) Charter County and Regional Transportation System Surtax imposed pursuant to the Ordinance.

(M) *Surtax Net Proceeds* shall mean the amount of Surtax proceeds received by the County from the Department.

(N) *Transportation Infrastructure* shall mean all land, roads, rights-of-way, easements, other interests in real property, buildings, facilities, stations, stops, buses, trains, rolling stock, vehicles, tracks, guideways, utility systems, equipment, communications and technology hardware, software and/or systems, and any other real or tangible or intangible personal property required to design, plan, permit, develop, operate, maintain, repair, and replace buses, bus rapid transit, express buses, commuter and/or passenger rail and other transit or transportation services and systems provided by PSTA and eligible to be funded by the Surtax as provided for in accordance with Section 3 of the Agreement.

(O) *Transportation System Surtax Trust Fund* shall mean the trust fund created by the Ordinance to be held by the Clerk solely for receipt and distribution of the Surtax Net Proceeds in accordance with the terms of the Ordinance and this Agreement.

SECTION 3. USE OF SURTAX NET PROCEEDS. Notwithstanding any other provision of this Agreement, the County and PSTA agree that all Surtax Net Proceeds, including any interest earnings thereon, and/or proceeds of any bonds, notes, loans, lines of credit or other indebtedness secured thereby, including any interest earnings thereon, shall be expended by each Party only as expressly permitted by this Agreement, Section 212.055(1), Florida Statutes, and the Ordinance.

SECTION 4. DISTRIBUTION AND FINANCIAL MANAGEMENT OF THE SURTAX NET PROCEEDS.

(A) Upon receipt, the County shall deposit the Surtax Net Proceeds into the Transportation System Surtax Trust Fund to be held by the Clerk for distribution to PSTA in accordance with the Ordinance and this Agreement.

(B) Unless otherwise provided in Sections 6 or 9 hereof, all Surtax Net Proceeds shall be distributed to PSTA in accordance with Section 5 hereof, to be used by PSTA for the planning, development, improvement, construction, operation, and maintenance of local passenger rail and regional connections consistent with PSTA's Greenlight Plan, PSTA's present and future bus service, and/or an expanded bus system with bus rapid transit, increased frequency and extended hours consistent with the PSTA's Greenlight Plan, and to make payments to service indebtedness (including indebtedness refinancing such indebtedness) or satisfy other financial obligations, including without limitation any concession, lease or other payments to be made by PSTA under concession, lease or similar agreements, all in connection with PSTA's Greenlight Plan and all as authorized by Section 212.055(1), Florida Statutes and other applicable law.

(C) PSTA agrees to use its best efforts to maximize state and federal grants, donations of rights-of-way, construction of stations, public private partnerships, and any and all similar resources in order to leverage the Surtax Net Proceeds to their fullest extent.

SECTION 5. DUTIES OF THE CLERK. The Clerk shall receive the Surtax Net Proceeds from the Department and act as trustee thereof and shall retain all Surtax Net Proceeds in the Transportation System Surtax Trust Fund until disbursed in accordance with the Ordinance and this Agreement. Disbursements of the Surtax Net Proceeds pursuant to the Ordinance and this Agreement shall be made to PSTA by the Clerk within five (5) business days of receipt by the Clerk of the Surtax Net Proceeds from the Department. PSTA reserves the right to conduct an audit of the Surtax Net Proceeds received by the Clerk and distributed to PSTA.

SECTION 6. PSTA's AD VALOREM TAXING AUTHORITY

(A) PSTA (i) will, prior to the Surtax Referendum, continue to acknowledge to the voters of the County that it intends not to impose an ad valorem tax pursuant to the authority granted by its Special Act for Fiscal Year 2016 and thereafter, as long as the Surtax is not repealed and PSTA continues to receive Surtax Net Proceeds, and (ii) agrees to use its best efforts to have its Special Act amended to eliminate its ad valorem taxing authority, effective upon PSTA's receipt of Surtax Net Proceeds. The County agrees to support PSTA in its effort to so amend its Special Act.

(B) If PSTA elects to impose an ad valorem tax pursuant to the authority granted by its Special Act while the Surtax is being collected and PSTA is entitled to receive Surtax Net Proceeds, the County shall be entitled to reduce the Surtax Net Proceeds distributed to PSTA in the amount of the ad valorem taxes collected by PSTA in each Fiscal Year in which it imposes an ad valorem tax. If PSTA discontinues such ad valorem tax levy, in the County's sole discretion, the County may begin distributing the full amount of the Surtax Net Proceeds to PSTA.

(C) Notwithstanding the foregoing or any other provision of this Agreement, in the event PSTA imposes an ad valorem tax as contemplated by this Section 6, the County may take any action it deems necessary and is legally required to permanently reduce the levy of the Surtax; provided, however, the County shall use its best efforts to ensure that at the time any

such permanent reduction is made, the reduction shall not exceed the amount of ad valorem taxes collected by PSTA in the immediately prior Fiscal Year.

(D) If PSTA's Special Act is amended to eliminate PSTA's authority to levy an ad valorem tax on real property in the County, this Section 6 shall be of no further force and effect.

SECTION 7. PLEDGE OF SURTAX NET PROCEEDS.

(A) In order to finance or refinance projects, PSTA may issue bonds or notes, enter into lines of credit, incur loans or other indebtedness, enter into concession, lease or similar agreements, and may secure payment obligations under such bonds, loans, notes, lines of credit or other indebtedness or pursuant to such concession, lease or similar agreements with a pledge of and lien on the Surtax Net Proceeds in accordance with the provisions of Section 212.055(1), Florida Statutes, and other applicable law, including any indebtedness refinancing such bonds, loans, notes, lines of credit or other indebtedness. Prior to the initial issuance of any indebtedness by PSTA, the Pinellas County Attorney shall approve the trust agreement or trust indenture (the "Trust Agreement") pursuant to which such indebtedness is to be issued. The County and PSTA agree that it is their intent that such approval be provided by the County Attorney prior to the date of the Surtax Referendum. Notwithstanding the foregoing, PSTA shall at all times comply with its debt policy referred to in Section 10 hereof.

(B) Notwithstanding anything herein to the contrary, to the extent permitted by law, in order to effectuate the purposes in PSTA's Greenlight Plan, PSTA may enter into leases or public private partnerships with concessionaires, and may secure its obligations to make lease, concession and other payments under lease and concession agreements with a pledge of and lien on the Surtax Net Proceeds in accordance with the provisions of Section 212.055(1), Florida Statutes.

(C) Nothing contained herein shall be construed to limit the amount of indebtedness that may be incurred by PSTA to be secured by the Surtax Net Proceeds.

SECTION 8. MILESTONE SCHEDULE. PSTA and the County hereby approve the Milestone Schedule. PSTA shall promptly notify the County as soon as it reasonably believes that any milestone set forth in the Milestone Schedule is likely not to be timely achieved. Upon such notification or upon PSTA's failure to achieve timely any milestone set forth in the Milestone Schedule, PSTA and the County shall meet as soon as practicable to discuss the reasons for PSTA not timely achieving the milestone and the effect of doing so on PSTA's progression on PSTA's Greenlight Plan. If the County and PSTA are unable to agree to a resolution or an amendment to the Milestone Schedule, a nationally recognized transit consultant, approved by PSTA and the County will be retained, at the sole cost and expense of PSTA. Within sixty (60) days of having been retained and approved, or such longer time as is reasonably necessary, such transit consultant shall make written recommendations to the parties on methods PSTA should utilize in the future to achieve the relevant milestone(s), to achieve in a timely manner future milestones, and/or to revise the Milestone Schedule, as appropriate. PSTA and the County agree to promptly implement the recommendations of such transit consultant to achieve the relevant milestone(s), to achieve in a timely manner future milestones, and/or to revise the Milestone Schedule, as appropriate, as such recommendations are modified by mutual

agreement of the Parties, and to the extent such recommendations are permitted by law and existing contractual obligations of PSTA. Prior to the 10th anniversary of this Agreement, the Parties shall prepare a new, mutually agreeable Milestone Schedule consistent with PSTA's Greenlight Plan that will become effective on the 10th anniversary of this Agreement.

SECTION 9. REDUCTION AND TERMINATION OF SURTAX. Upon the earlier of:

(A) completion of all steps to finance (including without limitation debt incurrence, and/or execution of public-private partnerships or leases), acquire, and/or construct all projects and capital improvements contemplated in PSTA's Greenlight Plan, as mutually determined by PSTA and the County (if the parties cannot mutually determine whether PSTA's Greenlight Plan has been completed, the parties shall engage a nationally recognized transit consultant acceptable to both Parties to make such determination);

(B) PSTA's decision to discontinue such steps to finance, acquire and/or construct substantially all of the projects and capital improvements contemplated in PSTA's Greenlight Plan;

(C) the occurrence of a Force Majeure;

(D) the fiftieth 50th anniversary of the date the Surtax is first levied and each 20th anniversary thereafter;

(E) a payment default under the Trust Agreement; or

(F) PSTA applying Surtax Net Proceeds for a purpose other than PSTA's Greenlight Plan,

the County and PSTA shall meet to discuss the particular event described in clauses (A) through (F) that has occurred and shall consider, depending upon the event, revising this Agreement, revising or adding to PSTA's Greenlight Plan, seeking further authorization for additional uses by PSTA of the Surtax Net Proceeds or reducing or increasing, if there has been a previous reduction and subject to the limitations of the Surtax Referendum, temporarily or permanently, the Surtax Net Proceeds. If the Parties are unable to agree on what action, if any, to take, after making a good faith effort, the County may take any legally required action to reduce the Surtax Net Proceeds distributed to PSTA. In determining what action to take, if any, pursuant to this Section 9, the Parties shall comply with the provisions of Section 29(B) hereof.

Any reduction of Surtax Net Proceeds distributed to PSTA as a result of an action or event described in clauses (C), (E) or (F) above shall be temporary and the County shall promptly begin distributing the full amount of the Surtax Net Proceeds to PSTA, including all amounts that were held back and actual interest earnings, if any, actually derived by the County, when the County determines, in its sole discretion, that such event or action has been cured or no longer exists. The foregoing shall not impose a duty on the County to invest any of such withheld amounts. The County shall determine, in its sole discretion, whether any reduction of Surtax Net Proceeds distributed to PSTA as a result of an action or event described in clauses

(A), (B) or (D) will be temporary or permanent. If the County determines to permanently reduce the distribution of the Surtax Net Proceeds, to the extent and as permitted by law, it may take such action as it deems necessary and is legally required to reduce the amount of the Surtax levy in accordance with this Section. Notwithstanding anything in this Section 9 to the contrary, any temporary reduction shall be limited to an amount that will not impair PSTA's ability to meet all of its then outstanding financial obligations under the Trust Agreement.

SECTION 10. OTHER ACTIONS REQUIRING COUNTY CONSENT. The following actions shall require prior written consent of the County, unless and until the Surtax levy is terminated pursuant to Section 9:

(A) Any amendment to PSTA's enabling legislation that would amend the membership of the PSTA Board of Directors so as to reduce the percentage of representation of the County on the PSTA Board of Directors to less than thirty-three percent (33%) or that would otherwise be materially adverse to the County hereunder, and that is initiated by PSTA through a vote of its Board of Directors.

(B) Any substantial amendment to PSTA's Greenlight Plan.

(C) PSTA's entering into any joint venture or partnership (other than a public-private partnership) or interlocal agreement with respect to PSTA's Greenlight Plan that is materially adverse to the interests of the County.

(D) PSTA's debt and investment policies, which shall be provided to the County prior to the distribution of any Surtax Net Proceeds to PSTA hereunder, and any material amendments thereto.

(E) Any amendment to the Trust Agreement which would be materially adverse to the County; provided, however, notwithstanding the foregoing, only consent of the County Attorney shall be required with respect to this Section 10(E).

PSTA shall provide written notice to the County when seeking approval of any action requiring County approval pursuant to this Section. The County shall either approve or deny the consent request in writing in a timely manner. When requested by PSTA to approve or consent to any of the items in this Section 10, the County shall use its best efforts to provide either written approval or denial in the timeframe requested by PSTA, so long as the requested timeframe is reasonable. If the County is unable to provide its written approval or denial within the timeframe requested by PSTA, the County shall so advise PSTA in writing and provide an estimate of the time necessary to respond to PSTA's request. Notwithstanding anything contained herein to the contrary, the County shall not unreasonably delay any approval, shall not unreasonably withhold any approval, shall not cause PSTA to be in breach of any agreement, law, regulation or jeopardize PSTA's ability to cost effectively incur debt as contemplated by PSTA's Greenlight Plan or cause any of the events set forth in Section 9 (C), (E) and (F) in exercising its right to participate in and approve any of any of the items in Section 10.

SECTION 11. FEES, COSTS AND EXPENSES.

(A) PSTA shall reimburse the County for the fees, costs and expenses incurred by the County with respect to all actions relating to the enactment of the Ordinance, the negotiation, execution and delivery of this Agreement and all other matters related thereto through and including the validation of the initial issuance of bonds for PSTA's Greenlight Plan, including, without limitation, the fees and expenses of bond counsel or other outside counsel, its financial advisor, and all similar fees, costs and expenses. The total sum to be paid by PSTA pursuant to this Section 11 shall not exceed the sum of One Hundred Thousand Dollars (\$100,000.00). The amount due under this Section 11 shall be made in a one-time payment and is due only upon passage of the Surtax Referendum and after PSTA begins to receive Surtax Net Proceeds in accordance with the Ordinance and this Agreement.

(B) While any of the Surtax Net Proceeds are being withheld by the County pursuant to Section 9 hereof, all costs and expenses incurred by the County and the Clerk in exercising their obligations hereunder, and the fees and expenses of outside professionals that the County reasonably determines are necessary for the County and/or the Clerk to exercise their obligations hereunder shall be withdrawn by the County from the withheld funds.

(C) PSTA shall be solely responsible for all costs, expenses and/or obligations relating to or arising from transit or transportation service and systems provided by PSTA, including PSTA's Greenlight Plan, including but not limited to: (i) acquisition, development, construction, improvement, operation, maintenance, repair or replacement of Transportation Infrastructure, as well as the acquisition of any necessary real property; (ii) PSTA's operating, personnel, and supportive services, costs and expenditures; and (iii) payment of principal and interest on bonds or other debt obligations issued or incurred for PSTA's Greenlight Plan as provided in Section 7.

(D) The Parties recognize that certain County Infrastructure may be accessed or utilized by PSTA for PSTA's Greenlight Plan. When necessary to implement PSTA's Greenlight Plan, PSTA agrees to obtain County approval and coordinate any and all activities that will impact County Infrastructure in advance of any such activity. Should it be necessary to alter, construct, improve, develop, or replace County Infrastructure in order to implement PSTA's Greenlight Plan, PSTA shall pay all costs related to such alteration, construction, improvement, development, or replacement of County Infrastructure. PSTA shall require any such alteration, construction, improvement, development, or replacement of County Infrastructure be consistent with any and all then current design standards of the County. Project exceptions or variances from the design standards may be submitted to the County for its prior review and approval. The Parties agree to establish the method and manner of coordinating all such activities impacting County Infrastructure in a separate agreement for each project undertaken in the implementation of PSTA's Greenlight Plan that will, at a minimum, address the following issues:

(1) PSTA's notification to the County of any preliminary plans that require the use of County Infrastructure.

(2) The County's right to approve plans and specifications and the timing of such review and approval.

(3) The County's right to review all bids received and approve the award of the construction project.

(4) The County's right to participate in project meetings and receive periodic updates/status reports as requested.

(5) The County's right to inspect the portions of any project impacting County Infrastructure at any phase of construction.

In undertaking the activities set forth in this Section 11.D, the Parties agree to be responsible for their own acts of negligence. However, PSTA shall require any contractor, subcontractor, consultant or subconsultant who performs work on any such project to indemnify the County where permitted by and in accordance with law, and name the County as an additional insured on any insurance that PSTA is also named as an additional insured, using language approved in advance by the County. PSTA shall pay the County for all costs and fees incurred in the review and approval process set forth herein, including without limitation reimbursement for staff time (which shall consist solely of the direct cost to the County of the employee's wages and benefits, prorated to an hourly basis, and not including any administrative or other costs that do not represent direct compensation to the employee), actual fees and expenses of outside consultants or other experts hired by and paid by the County to perform the review described above, and all similar fees, costs and expenses, as specifically provided for in each separate agreement contemplated herein. The County shall not attempt to charge PSTA any permit fees.

(E) PSTA shall be solely responsible for any additional costs incurred by the County necessary to maintain and operate existing County Infrastructure directly resulting from conflicting or adjacent PSTA facilities and shall reimburse the County for such costs from Surtax Net Proceeds.

(F) Notwithstanding any other provision of this Agreement, nothing herein is intended to transfer any jurisdiction, exclusive use, responsibility, control or access to the PSTA for County Infrastructure. However, this is not intended to prevent PSTA from obtaining rights or permission from the County for the exclusive use of a portion of County right-of-way. Nothing contained in this Section 11 shall be construed as requiring PSTA to pay the County for its present or future use of County rights-of-way or other County Infrastructure unless such rights-of-way or County Infrastructure shall be for the sole and dedicated use of PSTA. Furthermore, nothing contained in this Section 11 shall require PSTA to pay for any costs incurred by a private utility which incurs costs as a result of any improvements or changes made by PSTA to any County right-of-way or other County Infrastructure and the County agrees to require public utilities to relocate their utilities at their expense if necessitated by work by PSTA in accordance with any policies, rules, regulations or practices of the County when the County performs work in County rights-of-way.

(G) If and only if the Surtax Referendum passes, PSTA shall validate its authority to issue bonds or notes, enter into lines of credit, incur loans or other indebtedness and the pledge

of the Surtax Net Proceeds as security therefore, including this Agreement, pursuant to Chapter 75, Florida Statutes, at its sole cost and expense. The County shall fully cooperate with and provide its best efforts to assist PSTA in obtaining a judgment validating such rights, including on any appeals, and PSTA shall pay for the County's costs and expenses related thereto.

SECTION 12. BUDGET, AUDIT AND REPORTS. PSTA shall annually provide the County a copy of its adopted budget within fifteen (15) days after its adoption. PSTA shall also cause to be prepared each year audited financial statements and shall provide a copy of such statements to the County by April 15th following the end of each Fiscal Year. PSTA shall provide a progress report on PSTA's Greenlight Pinellas Plan each year within 60 days of the end of PSTA's fiscal year, including but not limited to an updated pro forma. PSTA shall also provide the County with any information required to be provided to bondholders, lenders, and credit and liquidity providers under the provisions of the Trust Agreement or with respect to any governmental grant or loan and such other information as the County may reasonably request from time to time, and the County shall also provide to PSTA with such information as PSTA may reasonably request from time to time.

SECTION 13. MAINTENANCE AND PRESERVATION OF FACILITIES AND ASSETS. PSTA covenants and agrees that it will maintain, preserve, keep and operate, or cause to be maintained, preserved, kept and operated, all of PSTA's facilities, assets and properties, including those that are acquired and/or constructed in connection with PSTA's Greenlight Plan, in good and efficient repair, working order and operating condition in conformity with standards customarily followed in the transit industry. PSTA will make all necessary and proper repairs, renewals and replacements which are economically sound, so that at all times PSTA's operations and business can be properly and advantageously conducted in an efficient manner.

SECTION 14. INSURANCE. PSTA shall procure and maintain, or cause to be procured and maintained, so long as it is receiving Surtax Net Proceeds hereunder, subject to the requirements of State law, insurance against such risks and at such coverage levels and with such deductibles as shall be determined by PSTA to be adequate to protect PSTA and its assets and which insurance shall be consistent with the types and levels of insurance maintained by public transit authorities similar to PSTA. Such insurance shall include, but not be limited to, liability and property, which property insurance shall cover loss or damage by fire, lightning, explosion, windstorm, flood (where required), riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. In procuring such insurance, and each year when renewing such insurance, PSTA shall employ an insurance consultant or actuary acceptable to the County to advise and recommend the types and levels of insurance to be maintained by PSTA.

SECTION 15. COMPLIANCE WITH LAWS. The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to public records laws, and the County's Comprehensive Plan. The County's execution of this Agreement shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to PSTA's Greenlight Plan.

SECTION 16. INDEMNIFICATION. Except for the activities described in Section 11(D) above which will be the subject of a separate agreement, to the extent permitted by law, PSTA shall defend, indemnify and pay the cost of defense, and hold harmless the County from all damages, suits, actions, or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, on account of any negligent or willful act or omission, or neglect or misconduct of PSTA; This paragraph shall not be interpreted to waive any immunity from or limitation of liability that PSTA may be entitled to under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

SECTION 17. FORCE MAJEURE. Neither County nor PSTA shall be deemed to be in breach of this Agreement by reason of a Force Majeure.

SECTION 18. DUE AUTHORITY. Each Party to this Agreement represents and warrants to the other Party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the Party is authorized to do so; and (iii) this Agreement constitutes a legal and binding obligation of the Party, enforceable according to its terms.

SECTION 19. ASSIGNMENT. No Party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

SECTION 20. NOTICES.

(A) Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either Party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient below, upon expiration of five (5) business days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

County Administrator
Pinellas County
315 Court Street
Clearwater, Florida 33756

TO PSTA:

Chief Executive Officer
Pinellas Suncoast Transit Authority
3201 Scherer Drive
St. Petersburg, Florida 33716

(B) Either Party may change its authorized representative or address for receipt of notices by providing the other Party with written notice of such change. The change shall become effective ten (10) days after receipt of the non-changing Party.

SECTION 21. WAIVER. No act of omission or commission of either Party, including without limitation, any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or

modification is to be effected only through a written modification to this Agreement, duly authorized and executed by both Parties.

SECTION 22. GOVERNING LAW. This Agreement shall be construed in accordance with the Laws of the State of Florida.

SECTION 23. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

SECTION 24. THIRD-PARTY BENEFICIARY. Except for lenders, creditors, credit enhancers, concessionaires, lessors, bond trustees or other parties that are secured by Surtax Net Proceeds, persons not a party to this Agreement may not claim any benefit hereunder or as third-party beneficiaries. Notwithstanding the foregoing, to the extent that the County is required to defend any action brought by any such lender, creditor, credit enhancer, concessionaires, lessor, bond trustee or other party, all of the County's costs related to such defense shall be paid from legally available moneys of PSTA, which may include Surtax Net Proceeds, as an unsecured obligation of PSTA.

SECTION 25. HEADINGS. The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

SECTION 26. NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT. This Agreement has been prepared by the County and reviewed by PSTA and its professional advisors. PSTA, the County and the County's professional advisors believe that this Agreement expresses their understanding and that it should not be interpreted in favor of either PSTA or the County or against PSTA or the County merely because of their efforts in preparing it.

SECTION 27. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties and no change will be valid unless made by supplemental written agreement duly authorized and executed by the Parties.

SECTION 28. SEVERABILITY. Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement, unless it is determined that the County may not impose the Surtax or that the Surtax Net Proceeds may not be legally distributed to PSTA, in which case this Agreement shall terminate.

SECTION 29. NO IMPAIRMENT; LIMITATION ON DISTRIBUTION REDUCTIONS.

(A) Except and to the extent expressly permitted herein, as long as bonds, notes, loans, lines of credit, other evidences of indebtedness, lease agreements, concession agreements or other similar agreements are secured by Surtax Net Proceeds, the pledging of the Surtax Net Proceeds in the manner contemplated hereunder shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the Board of

Commissioners of the County, and the County shall not take any action which will adversely impact its obligation and ability to levy the Surtax and to pay Net Surtax Proceeds to the PSTA to be used as contemplated in this Agreement and in the Ordinance.

(B) Except as otherwise provided below, notwithstanding anything herein to the contrary, the County shall not under any circumstances reduce or cause the reduction of Surtax Net Proceeds to be distributed to PSTA (i) unless written confirmation is received from each rating agency then maintaining a rating on PSTA debt obligations to the effect that such reduction will not in and of itself cause such rating agency to reduce or withdraw the then current rating, and (ii) below a level which, in the reasonable opinion of a qualified independent consultant(s) selected by PSTA and approved by the County (a) jeopardize, at such time or in the future, PSTA's ability to cost-effectively incur debt as contemplated in PSTA's Greenlight Plan, (b) jeopardize, at such time or in the future, PSTA's ability to obtain federal and state funding at the times and in the amounts contemplated in PSTA's Greenlight Plan, (c) jeopardize, at such time or in the future, PSTA's ability to execute public-private partnerships (if deemed by PSTA and its financial advisor to be the most appropriate way to deliver all or a portion of PSTA's Greenlight Plan), (d) cause PSTA to be in breach of this Agreement or any then-existing funding, grant or loan agreement or the Trust Agreement, (e) jeopardize, at such time or in the future, PSTA's ability to renew, replace, and properly maintain PSTA's physical assets at the times and in the amounts contemplated in PSTA's Greenlight Plan, or (f) otherwise frustrate, at such time or in the future, PSTA's ability to plan, develop, acquire, improve, construct, equip, operate, maintain, or finance PSTA's Greenlight Plan. This Section 29(B) shall not apply in any manner with respect to the County's ability to reduce Surtax Net Proceeds distributions to PSTA pursuant to Section 6 hereof.

SECTION 30. DEFAULT AND REMEDIES FOR DEFAULT.

(A) Each Party hereto shall be considered in default if it is in default in the due and punctual performance of any covenant, condition, agreement and provision contained herein, to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring same to be remedied shall have been given to such Party by the other Party.

(B) Upon the happening and continuance of a default by a Party hereto, then and in every such case the other Party may proceed to protect and enforce their rights hereunder by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for mandamus or the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Party shall deem most effectual to protect and enforce such rights.

(C) The provisions of this Section 30 shall not apply with respect to any of the matters set forth in Section 6 and Section 9 hereof. Any event that occurs under Section 6 or Section 9 hereof that could result in a reduction of the distribution of Surtax Net Proceeds shall not be considered a default under this Section 30.

SECTION 31. COUNTERPARTS. This Agreement may be executed in counterparts by the Parties.

SECTION 32. TERMINATION. The Parties' obligations under this Agreement shall terminate immediately without any further action and be of no further force and effect if the Surtax Referendum does not pass or if the Surtax is repealed in its entirety.

SECTION 33. FILING OF AGREEMENT. This Agreement and any amendments thereto, shall be filed with the Clerk as provided in Section 163.01(11), Florida Statutes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

APPROVED AS TO FORM

**PINELLAS SUNCOAST TRANSIT
AUTHORITY**

By: _____
General Counsel

By: _____
Chairperson

ATTEST

Secretary/Treasurer

**ATTEST:
KEN BURKE, CLERK OF COURT**

**PINELLAS COUNTY, FLORIDA, by and
through its Board of County Commissioners**

By: _____
Deputy Clerk

By: _____
Chairman

**APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY**

By:  _____

EXHIBIT A

MILESTONE SCHEDULE

- Expand night/weekend bus service spans across system and increase service without immediate need for fleet expansion -- end of calendar year 2016
- Submit to the Federal Transit Administration (the "FTA") environmental and engineering for BRT/Rapid Bus Service Phase I -- end of calendar year 2016
- Purchase standard and coach buses for increased frequencies -- end of calendar year 2017
- Complete capital procurement and installation for BRT/Rapid Bus Service Phase I -- end of calendar year 2017
- Begin increases in midday bus service frequencies for frequent local routes and all trolleys and begin new regional express service -- end of calendar year 2018
- Service opens for BRT/Rapid Bus Service Phase I -- end of calendar year 2018
- Increase local midday bus service frequencies for supporting local routes and North County Connector; begin circulator service and seasonal trolley service -- end of calendar year 2019
- Submit to the FTA environmental and engineering for BRT/Rapid Bus Service Phase II -- end of calendar year 2019
- Complete capital procurement and installation for BRT/Rapid Bus Service Phase I -- end of calendar year 2020
- Submit to the FTA environmental and engineering for light rail transit -- end of calendar year 2020
- Service opens for BRT/Rapid Bus Service Phase I -- end of calendar year 2021
- Complete acquisition of vehicles and construction for light rail transit -- end of calendar year 2023
- Service opens for light rail transit -- end of calendar year 2024

EXHIBIT B

COUNTY INFRASTRUCTURE

Access Routes (*i.e., maintenance berms, etc.*)
ADA Ramps
Backflow Preventers
Bike Lanes
Box Culverts
Bridge Approaches
Drainage Control Structures
Drainage Ditches
Drainage Endwalls
Drainage Flared End Sections
Drainage Inlets
Drainage Manholes
Drainage Mitered End Sections
Drainage Pipes/Culverts
Drainage Ponds
Drainage Underdrains
Fences
Fire Flow Meters
Fire Hydrants
Green Infrastructure (*i.e., trees, landscaping, native plantings*)
Guardrails
Landscaping
Light Poles
Mast Arms/Strain Poles
Meter Boxes
Mitigation Facilities
Pedestrian Bridges
Pedestrian Handrails
Pump Stations
Rails
Reclaimed Water Distribution Lines
Reclaimed Water Flow Meters
Reclaimed Water Transmission Mains
Reclaimed Water Valves
Road Curb and Gutter
Road Medians
Road Pavement (*i.e., surface course, base, stabilization, etc.*)
Road Traffic Separators

COUNTY INFRASTRUCTURE

Sanitary Sewer Collection Lines
Sanitary Sewer Flow Meters
Sanitary Sewer Force Mains
Sanitary Sewer Gravity Mains
Sanitary Sewer Manholes
Sanitary Sewer Valves
Sidewalks
Signs (*i.e., traffic, stormwater, etc.*)
Stormwater Facilities
Traffic Cameras and Support Poles
Traffic Control Boxes and Associated Equipment
Traffic Control Lines (*i.e., fiber, etc.*)
Traffic Loops
Traffic Pull Boxes
Traffic Signals
Trails or Paths (*i.e., pedestrian, bike, etc.*)
Turning Lanes
Vehicular Bridges
Walls (*i.e., gravity walls, end walls, retaining walls, etc.*)
Water Distribution Lines
Water Flow Meters
Water (air release) Manholes
Water Transmission Mains
Water Valves
Wells (*i.e., sampling, monitoring, etc.*)