

CLEARWATER TRANSIT CENTER FUNDING INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2022, by and between Pinellas County, a political subdivision of the state of Florida (the "County"), and the Pinellas Suncoast Transit Authority, an independent special district created by Chapter 2000-424, Laws of Florida, as amended, ("PSTA") (collectively the "Parties").

RECITALS

WHEREAS, pursuant to Section 163.01, Florida Statutes, counties, cities, public authorities, state agencies, and other public agencies 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, pursuant to Chapter 2000-424, Laws of Florida, as amended, 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 to relocate, expand, and replace its existing Clearwater Transit Center with a new multimodal transit center to be located on property currently owned by the City of Clearwater at the corner of Court St. and Myrtle Ave. which will house up to 17 bus bays, a PSTA customer service center, electric bus charging infrastructure, and multimodal connections all as substantially depicted in the concept plans presented to the U.S. Department of Transportation ("USDOT") in PSTA's Rebuilding American Infrastructure with Sustainability and Equity ("RAISE") grant application for the PSTA Clearwater Multimodal Transit Center | FY22 RAISE project (the "Project"); and

WHEREAS, PSTA has received a letter of award for a FY 2022 Raise grant from USDOT (the "USDOT Raise Grant"); and

WHEREAS, PSTA intends to use its own Federal Transit Administration ("FTA") formula funds, the USDOT Raise Grant, other federal funds, and has received or expects to receive additional funds, financial or in-kind contributions toward the Project from the City of Clearwater, Forward Pinellas, and the State of Florida Department of Transportation ("FDOT") toward the Project's construction; and

WHEREAS, PSTA has developed a FY23 Project budget which includes a substantial contingency amount due to current economic uncertainty in material and labor costs in the total amount for all costs of Project, including design and construction such that there is an estimated Ten Million (\$10,000,000.00) funding gap in the estimated costs to complete the Project; and

WHEREAS, the County recognizes the benefits to the county as a whole to improve mass transit infrastructure to be effected by the Project and desires to provide "Last Dollar" funding necessary to complete the Project as further defined and described herein; and

WHEREAS, the Parties desire to collaborate to facilitate the Last Dollar funding of the Project.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are adopted as an integral part of this Agreement), the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the County and PSTA agree as follows:

1. PURPOSE AND INCORPORATION OF RECITALS

The Parties desire to enter into this Agreement to identify the respective responsibilities of PSTA for Project design and construction, and the County for “Last Dollar” Project funding. The above recitals stated as “Whereas” clauses are hereby incorporated into this Agreement.

2. PARTY REPRESENTATIVES

Each Party designates the following (Party) Representative, who will serve as the point of contact for the other Party’s Representative for purposes of Project administration and coordination among internal employees and representatives:

PSTA Representative:

Name: Abhishek Dayal

Address: 3201 Scherer Drive

E-mail: adayal@psta.net

County Representative:

Name: Kevin Knutson, Asst. County Admin.

Address: 315 Court St.

E-mail: kknutson@pinellascounty.org

Communications between the Party Representatives expressly required under this Agreement must be in writing and delivered by electronic mail, read receipt request, or USPS certified mail, return receipt requested.

3. PROJECT DESIGN AND CONSTRUCTION

PSTA shall be responsible for Project management including but not limited to the design and construction of the Project, procurement and selection of general contractor(s), and engineer(s), preparation of the specifications and final plans for the Project. Any general contractor retained to construct the Project and any engineer retained to design the Project will be selected by PSTA pursuant to PSTA purchasing and procurement procedures and applicable laws. Nothing herein shall be construed as a restriction of PSTA’s ability to select the general contractor(s) or the engineer(s), to reject any or all bids, or take any other action during the procurement process. PSTA will include the County Representative or his designee in all Project management team meetings. PSTA will contemporaneously provide to the County Representative or his designee all information and documents provided to the PSTA Project management team. The County Representative, as part of the Project management team will be responsible for reviewing materials and providing comments. The Project management team will review all design submittals and provide comments as needed.

PSTA is fully responsible for Project construction. PSTA will construct the Project in accordance with the final design plans and specifications. The PSTA Representative will notify the County Representative upon completion of Project construction as evidenced by issuance of a Certificate of Occupancy.

4. COUNTY LAST DOLLAR FUNDING

The combined funds from PSTA's FTA funding formulas, FDOT, Forward Pinellas, and the City of Clearwater are the PSTA's local match for the USDOT Grant and does not include the County Last Dollar Funds. The County will provide "Last Dollar" funding for the Project in the amount not to exceed Eight Million Dollars (\$8,000,000.00) subject to the requirements of this Agreement ("County Last Dollar Funds"). No County Last Dollar Funds will be disbursed by the County to PSTA or by PSTA to any other entity until and unless:

- A. All conditions precedent in Section 5 to this Agreement have been met; and
- B. The Project scope is not expanded beyond that described within the USDOT RAISE Grant; and
- C. All other sources of funding identified in the Table 1 UDSOT Grant application for the Project have been exhausted; and
- D. Notice of not less than sixty (60) days, in accordance with the Notice Section of this Agreement is given to the County, that condition C (above) has occurred; and
- E. Construction activities for which the County Last Dollar Funds will be used toward an application for payment for the Project have been completed to the acceptance of PSTA; and
- F. PSTA provides an invoice to the County for amounts due to satisfy completed Project construction activities.

County payments will be made in accordance with the Local Government Prompt Payment Act (§218.70, Florida Statutes, et. seq.).

5. CONDITIONS PRECEDENT

The County's obligation to provide County Last Dollar Funds under this Agreement will be of no effect until all of the following Conditions Precedent are met:

- A. PSTA has received legal title to the real property on the corner of Court St. and Myrtle Ave. from the City of Clearwater as such property is described as the UDSOT Grant application for the Project.
- B. PSTA has final, fully executed and effective agreements for the funding with all of the entities referenced in, and in amount not less than indicated in, the Table 1 of the UDSOT Grant application for the Project.

In the event that the Conditions Precedent in this Section are not met by December 31, 2024, this Agreement will become subject to unilateral termination in the sole discretion of the County.

6. INSURANCE

During the term of this Agreement, any contractors or subcontractors hired by PSTA for the construction and maintenance of the Project must provide and maintain at a minimum the following type of insurance with companies meeting the qualifications below.

A. Comprehensive General Liability Insurance including, but not limited to, Independent Contractor, Contractual, Premises/Operations, Products/Completed Operations, Explosion, Collapse and Underground and Personal Injury covering the liability assumed under indemnification provisions of this Agreement, with limits of liability for personal injury and/or bodily injury, including death, and property damage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate limit. Coverage must be on an occurrence basis, and the policy must include Broad Form Property Damage coverage, and Fire Legal Liability of not less than \$50,000, per occurrence, unless otherwise stated by exception herein.

B. Workers Compensation Coverage must be provided at limits no less than those required by law; Employers' Liability Insurance of not less than \$500,000 for each accident.

C. Automobile Liability Insurance must be provided in accordance with the laws of the State of Florida as to the ownership, maintenance and use of all owned, non-owned, leased or hired vehicles. The bodily injury and property damage limits must not be less than \$1,000,000 combined single limit each accident.

D. Excess or Umbrella Liability Insurance excess of primary coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate required in paragraphs (A), (B), (C) above.

E. Pollution Legal/Environmental Legal Liability Insurance with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. Coverage must apply to sudden and gradual pollution conditions.

F. Any insurance company providing the required coverages above must have a Best's rating of at least A- VIII.

G. Insurance coverage must be primary and non-contributory.

H. To the extent permitted by law, all policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the Contractor and any subcontractors to meet the requirements of this Agreement must be endorsed to include Pinellas County, a Political Subdivision of the State of Florida, and

PSTA as primary, non-contributory Additional Insureds indicating coverage on certificate boxes is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.

I. Insurance policies, other than Professional Liability, must include waivers of subrogation in favor of Pinellas County, and PSTA from the contractor and subcontractor(s). Indicating such coverage on certificate is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.

7. INDEMNITY

PSTA must indemnify and cause any third-party contractor to indemnify, hold harmless, pay on behalf of, and pay the costs of defense of the County, its officers, employees, and agents from and against all claims, damages, losses, and expenses arising out of or resulting from the Project, which includes but is not limited to construction, by or on behalf of PSTA pursuant to this Agreement. Costs of defense may include reasonable attorney's fees should the County deem it necessary to retain outside counsel due to the nature of the claim, or, should the County deem it appropriate to use in-house attorneys as per its usual course, costs of defense will be limited to actual costs, excluding attorney's fees. PSTA consents to be sued by third parties for any claims arising during the term of this Agreement, for which PSTA is not immune from suit and only to the extent of the waiver of sovereign immunity under Florida Statutes Section 768.28, and arising out of or resulting from the Project. Nothing contained in this Agreement and specifically this indemnification provision is intended to nor may it be construed as an additional waiver of sovereign immunity beyond the expressed written contractual obligations of PSTA or the County contained within this Agreement. Excluded from the PSTA's indemnification obligation are any claims for which PSTA or the County is immune from suit under the doctrine of sovereign immunity or for any amount of a claim exceeding the limitations of liability established by section 762.28, Florida Statutes; notwithstanding, this limitation of liability does not apply if a claims bill is enacted. Furthermore, nothing contained herein may be construed to require PSTA to indemnify or insure the County for its own negligence or to assume any liability for the County's negligence. The duty to pay the cost of defense is independent and separate from the duty to indemnify, and the duty to pay the cost of defense defend exists regardless of any ultimate liability of PSTA or the County. However, the costs will not be due and owing until thirty (30) days after the County invoices the costs subsequent to the final resolution of the litigation as to the County. PSTA's obligations under this Section will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

Any contract entered into by PSTA in furtherance of the activities permitted by this Agreement must contain the following indemnification language:

"The Contractor agrees to indemnify, hold harmless, pay on behalf of, defend Pinellas County, its officers, agents, and employees, and pay the costs of defense of Pinellas County and its agents and employees from and against all claims, damages,

losses and expenses arising out of or resulting from the Contractor's actions undertaken pursuant to this Agreement. The duty to defend under this paragraph is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, the County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to the Contractor. The Contractor's obligation to indemnify and defend under this provision will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations."

8. TERMINATION

In the event funds to finance this Agreement become unavailable, a Party may terminate their participation by providing written notification to the other Party, pursuant to the Notices Section of this Agreement. Each Party will endeavor, whenever possible and consistent with its legal obligations and principles of prudent management, to provide at least thirty (30) days' notice for termination for lack of funds. Each Party is the final authority as to the availability of funds and extension of notice within the time herein stated.

The Parties may terminate this Agreement by mutual written agreement at any time.

9. CONDITION SUBSEQUENT

If PSTA fails to complete the Project the County is entitled to be reimbursed by PSTA for the full amount of the County Last Dollar Funds disbursed toward the Project on the same terms and conditions as PSTA's return of the UDSOT RAISE Grant. The provisions herein shall survive termination or expiration of this Agreement if terminated prior to completion of the Project.

10. FILING AND EFFECTIVE DATE

This Agreement will be effective upon execution by both Parties and the filing of such fully executed Agreement by the County with the Clerk of the Circuit Court.

This Agreement will expire ten (10) years unless terminated earlier as provided in Section 8 above, unless extended by mutual written agreement of the Parties, or upon full and completion of Project as evidenced by a Certificate of Occupancy, whichever comes first. However, any provisions herein specifically noted as surviving termination or expiration of this Agreement will survive termination or expiration of this Agreement.

11. AMENDMENTS

This Agreement may be modified or amended only by a document in writing executed by the County and PSTA with the same formality of this Agreement.

12. GOVERNING LAW

The laws of the State of Florida govern this Agreement.

13. RELATIONSHIP OF THE PARTIES

Nothing contained herein may be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or landlord and tenant or of partnership or of joint venture between the County and PSTA.

14. SEVERABILITY

Should any section or portion of any section of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination will not render void, invalid or unenforceable any other section or any part of any other section of this Agreement.

15. NOTICES

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 one Party to another must be in writing and will be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

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

If to the County:
Kevin Knutson, Assistant County Administrator
Pinellas County
315 Court St.
Clearwater, FL 33765

With required copy to:

Alan S. Zimmet, General Counsel
Bryant Miller Olive P.A.
201 Franklin Street, Suite 2700
Tampa, FL 33602

16. FORCE MAJEURE

Neither Party will be liable for its non-performance or delayed performance under this Agreement if caused by force majeure. Force majeure is defined as a fire, flood, act of God, war, terrorism, riot, national emergency, sabotage, civil disturbance, strike, labor dispute, governmental act, law, ordinance, rule or regulation, or event which are not the fault or are beyond the control of the Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

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

By: _____
Charlie Justice, Chair

Approved as to Form: **APPROVED AS TO FORM**
By: Donald S. Crowell
Office of the County Attorney

PINELLAS SUNCOAST TRANSIT AUTHORITY

ATTEST

By:  _____
Chief Executive Officer

By:  _____

Approved as to form:  _____
for

General Counsel

PCAO # 396037

