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ORDINANCE NO. 19-_____

AN ORDINANCE OF HILLSBOROUGH COUNTY, FLORIDA, RELATING TO THE ONE PERCENT TRANSPORTATION SALES SURTAX LEVIED PURSUANT TO ARTICLE 11 OF THE HILLSBOROUGH COUNTY CHARTER; PROVIDING FOR THE USE, ALLOCATION AND DISTRIBUTION OF THE PROCEEDS OF SUCH SURTAX; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE HILLSBOROUGH COUNTY CODE; PROVIDING AN EFFECTIVE DATE.

Upon motion by Commissioner _____, seconded by Commissioner _____, the following ordinance was enacted by a vote of ___ to ___, with Commissioner(s) _____ voting “No”, Commissioner(s) _____ being absent.

WHEREAS, on November 6, 2018, the electorate of Hillsborough County approved a ballot measure providing for an amendment to the Hillsborough County Charter (the “Original Charter Amendment”) which levies a one percent (1%) transportation sales surtax (the “Transportation Surtax”) in accordance with Sections 212.054 and 212.055(1), Florida Statutes (2018) (the “State Surtax Law”); and

WHEREAS, pursuant to that certain Amended Final Judgement issued on July 9, 2019, by the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the “Circuit Court”), upon the Complaint for Bond Validation filed in Case No. 2019-CA-001382 (the “Bond Validation Judgement”), the Circuit Court, among other things, ruled the Transportation Surtax lawful and valid, but also held that certain of the provisions of the Original Charter Amendment providing for the use, allocation and distribution of the Transportation Surtax are unconstitutional and, therefore, severed and struck such provisions from the Original Charter Amendment (the Original Charter Amendment as modified by the Bond Validation Judgement is hereinafter referred to as the “Charter Amendment”); and

WHEREAS, in so holding, the Circuit Court determined that the State Surtax Law provides that the Board of County Commissioners of Hillsborough County (the “Board”) be exclusively responsible for determining which uses the Transportation Surtax proceeds should be allocated to as well as the amount to be distributed to each use; and

WHEREAS, in accordance with the foregoing, the Board desires to provide for the use, allocation and distribution of the proceeds of the Transportation Surtax in a manner consistent with the will of the electorate of Hillsborough County as expressed by the approval of the ballot measure on November 6, 2018, providing for the Original Charter Amendment; and

48 **WHEREAS**, such action is in the best interest of Hillsborough County and serves both
49 a county purpose and a public purpose;

50
51 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
52 **COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, THAT:**

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54 **SECTION 1. DEFINITIONS.**

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56 All terms used in this Ordinance in capitalized form, unless otherwise defined in
57 this Ordinance, shall have the same meanings as ascribed to them in the Charter
58 Amendment.

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60 **SECTION 2. USE, ALLOCATION AND DISTRIBUTION OF**
61 **TRANSPORTATION SURTAX PROCEEDS.**

62 **Section 2.01. Duties of the Clerk.** The Clerk shall receive the Surtax Proceeds from the Florida
63 Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate
64 account until disbursed in accordance with the Charter Amendment and this Section 2.01 and the
65 distribution allocations provided for in Section 2.02 of this Ordinance. Disbursements of the Surtax
66 Proceeds in accordance with the distribution allocations provided in Section 2.02 of this Ordinance
67 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk’s receipt of
68 Surtax Proceeds from the Florida Department of Revenue. The Clerk shall engage an independent
69 accounting firm to conduct an annual, independent audit of the distribution and expenditure of all
70 Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year
71 being audited, for the purpose of determining the Clerk’s and each Agency’s compliance with the
72 provisions of the Charter Amendment and this Ordinance relating to the distribution and
73 expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the
74 Transportation Surtax is in effect, the Board shall appropriate County funds to the Clerk on an
75 annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this
76 Section 2.01.

77 **Section 2.02. Distribution of Surtax Proceeds.** The Surtax Proceeds shall be deposited in the
78 Trust Fund maintained by the Clerk and distributed in accordance with the following formula:

79 **(1) General Purpose Portion.** Fifty-four percent (54%) of the Surtax Proceeds (the “General
80 Purpose Portion”) shall be distributed to the County and to each Municipality in accordance with
81 their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62
82 (the “Distribution Formula”) and be expended by the County and each Municipality in accordance
83 with the Charter Amendment and Section 2.04 of this Ordinance. The County and each
84 Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax
85 Proceeds allocated pursuant to this Section 2.02(1), and shall provide notice of such election to the
86 other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

87 **(2) Transit Restricted Portion.** Forty-five percent (45%) of the Surtax Proceeds (the “Transit
88 Restricted Portion”) shall be distributed to HART and be expended by HART in accordance with
89 the Charter Amendment and Section 2.05 of this Ordinance. Subject to compliance with applicable
90 law and the charter of HART, HART may elect to directly, or through the County, bond or
91 otherwise encumber the Transit Restricted Portion.

92 **(3) Planning and Development Portion.** One percent (1%) of the Surtax Proceeds (the “Planning
93 and Development Portion”) shall be distributed to the MPO. The Planning and Development
94 Portion shall be expended by the MPO on planning and development purposes, including data
95 collection, analysis, planning, and grant funding to assist the Agencies and the Independent
96 Oversight Committee in carrying out the purpose set forth in Section 11.01 of the Charter
97 Amendment.

98 **Section 2.03. Agency Project Plans.** No later than September 30th of each year, each Agency
99 shall deliver to the Independent Oversight Committee a plan (a “Project Plan”) setting forth the
100 projects, including reasonable detail for each, on which such Agency will expend their distribution
101 of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by
102 Sections 2.04 and 2.05 of this Ordinance. Each Project Plan must be approved by the governing
103 body of the applicable Agency. No Agency may expend Surtax Proceeds for any purpose other
104 than implementation of each of the projects set forth in such Agency’s Project Plan, and each
105 Agency shall diligently and prudently pursue implementation of each of the projects set forth in
106 such Agency’s Project Plan.

107 **Section 2.04. Uses of General Purpose Portion.** For any Agency that the Clerk reasonably
108 estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year,
109 such Agency’s share of the General Purpose Portion shall be expended by the Agencies for the
110 planning, development, construction, operation, and maintenance of roads, bridges, sidewalks,
111 intersections, and public transportation (which, for purposes of this Section, may include any
112 technological innovations such as autonomous vehicles and related infrastructure), to the extent
113 permitted by F.S. § 212.055(1), and include expenditures in the following categories:

114 **(1) Maintenance and Vulnerability Reduction.** At least twenty percent (20%) of the General
115 Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing
116 streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation
117 vulnerabilities.

118 **(2) Congestion Reduction.** At least twenty-six (26%) of the General Purpose Portion shall be
119 expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and
120 streets and through intersections. Expenditures in the category described in this Section 2.04(2)
121 may include projects that improve intersection capacity through the use of technology, the
122 construction of new intersections, the redevelopment of existing intersections, and may include
123 related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing
124 sentence do not constitute New Automobile Lane Capacity, as defined in Section 2.04(8) of this
125 Ordinance.

126 **(3) Transportation Safety Improvements.** At least twenty-seven (27%) of the General Purpose
127 Portion shall be expended to promote transportation safety improvements on existing streets, roads
128 and bridges.

129 **(4) Transportation Network Improvements.** At least twelve (12%) of the General Purpose
130 Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that
131 make walking and biking safer, to the extent the foregoing is or is planned to become a part of the
132 transportation network within any Agency’s jurisdiction, and to the extent permitted by F.S. §
133 212.055(1).

134 **(5) Remaining Funds.** Any remaining portions of the General Purpose Portion shall be expended
135 on any project to improve transportation in the applicable Agency’s jurisdiction to the extent
136 permitted by F.S § 212.055(1), the Charter Amendment and this Ordinance.

137 **(6) Inter-Agency Distributions.** Notwithstanding anything to the contrary set forth in this Section
138 2.04, the County and each Municipality may distribute any amount of its share of General Purpose
139 Portion to any Agency (an “Agency Distribution”). For purposes of this Section, any Agency’s
140 share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency
141 Distribution distributed, or received, as the case may be.

142 **(7) Small Agency Distributions.** Notwithstanding anything to the contrary set forth in this Section
143 2.04, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given
144 calendar year, on an annualized basis, is not required to expend its share of General Purpose
145 Portion on the categories set forth in Section 2.04(1) through (5) above, and shall instead expend
146 its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 of the Charter
147 Amendment and permitted by F.S. § 212.055(1).

148 **(8) Limits on New Automobile Lane Capacity.** Agencies are prohibited from expending any
149 funds from the categories mandated by Section 2.04(1), (2) and (3) above on New Automobile
150 Lane Capacity. For purposes of this Section 2.04(8), “New Automobile Lane Capacity” means
151 projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets
152 that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

153 **(9) Reallocation of Expenditure Categories.** Upon request by an Agency, which request must be
154 approved by a supermajority of the Board, the General Purpose Portion expenditure allocations
155 mandated in Sections 2.04(1) through (3) above may instead be expended on any project to
156 improve transportation within such Agency’s jurisdiction to the extent permitted by F.S §
157 212.055(1), the Charter Amendment and this Ordinance if, in the opinion of the requesting
158 Agency, any of the percentages set forth in Sections 2.04(1) through (3) exceed the amounts
159 required to fulfill the purpose set forth therein.

160 **Section 2.05. Uses of Transit Restricted Portion.** The Transit Restricted Portion, and any Agency
161 Distribution received by HART, shall be spent by HART for the planning, development,
162 construction, operation, and maintenance of public transportation projects located solely in
163 Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted
164 and amended from time to time by the HART board of directors, to the extent permitted by F.S. §
165 212.055(1), and include expenditures in the following categories:

166 **(1) Enhancing Bus Services.** No less than forty-five percent (45%) of the Transit Restricted
167 Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and
168 all other types of transit now or hereafter operated by HART. HART shall consider the following
169 factors in determining the projects included in its Project Plan for this purpose: existing transit
170 ridership; increasing existing service; expanding service to more residents; existing and future land
171 use; and the availability and feasibility of obtaining third party funding sources to fund any
172 portions of the Project Plan.

173 **(2) Expanding Public Transit Options.** No less than thirty-five percent (35%) of the Transit
174 Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for

175 at least seventy-five percent (75%) of the length of the applicable service. HART shall consider
176 the following factors in determining the projects included in its Project Plan for this purpose:
177 existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way;
178 increasing existing service; expanding service to more residents; existing and future land use; and
179 the availability and feasibility of obtaining third party funding sources to fund any portions of the
180 Project Plan.

181 **(3) Remaining Funds.** Any remaining portions of the Transit Restricted Portion shall be spent on
182 any project to improve public transportation permitted by F.S. § 212.055(1), the Charter
183 Amendment or this Ordinance.

184 **Section 2.06. Prohibited Uses.** No Surtax Proceeds may be used for any of the following uses:
185 (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports
186 facility or any other facility not related to transportation; or (iii) any other use expressly prohibited
187 by law.

188 **Section 2.07. Independent Oversight Committee.** To ensure that the Transportation Surtax is
189 successfully implemented, independent oversight of the distribution and expenditure of the Surtax
190 Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of
191 Hillsborough County residents appointed by the following bodies: (i) four (4) individuals
192 appointed by the Board, and of which two are Experts (as defined below) in either transportation,
193 planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality,
194 appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each
195 200,000 residents in such Municipality, appointed by the legislative body of that Municipality,
196 based on population estimates published annually by the State of Florida; (iv) two (2) from HART,
197 appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida
198 Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the
199 Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed
200 by the Hillsborough County Tax Collector. No person then currently serving as an elected or
201 appointed city, county, special district, state, or federal public office holder shall be eligible to
202 serve as a member of the Independent Oversight Committee. Additionally, no member of the
203 Independent Oversight Committee may be an employee of, independent contractor of, or otherwise
204 be materially engaged for remuneration by any public or private recipient of Surtax Proceeds.
205 Independent Oversight Committee members shall serve terms of three (3) years, without
206 compensation, and each shall serve at the pleasure of the appointing body. The Independent
207 Oversight Committee may make and adopt such by-laws, rules and regulations for its own
208 guidance and for the oversight of the Transportation Surtax as it may deem expedient and not
209 inconsistent with the Hillsborough County Charter and this Ordinance. The Independent Oversight
210 Committee shall have only those powers and duties specifically vested in it by Section 11.10 of
211 the Charter Amendment and this Ordinance. A majority of the members of the Independent
212 Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may
213 conduct business only when a quorum is present. For the duration of the period in which the
214 Transportation Surtax is in effect, the Board shall appropriate County funds on an annual basis for
215 the administrative expenses of the Independent Oversight Committee in an amount sufficient for
216 the Independent Oversight Committee to fulfill its duties under the Charter Amendment and this
217 Ordinance. For purposes of this Section 2.07, "Expert" means an individual who has at least seven
218 years of experience in their respective subject matter area, and possesses professional
219 accreditations or degrees that are typical of an expert in their respective subject matter area. The
220 Independent Oversight Committee shall have the powers and duties set forth below:

221 (1) Review the results of the annual audit described in Section 2.01 of this Ordinance and make
222 findings as to whether the Clerk and each Agency has complied with the terms of the Charter
223 Amendment and this Ordinance. Such findings shall include a determination as to whether Surtax
224 Proceeds have been distributed as provided in the Charter Amendment and this Ordinance and
225 whether the Surtax Proceeds have been expended in compliance with applicable state law, the
226 Charter Amendment, this Ordinance, and any additional requirements that an Agency may have
227 lawfully adopted.

228 (2) Certify as to whether the projects in each Agency Project Plan comply with the Charter
229 Amendment and this Ordinance.

230 (3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual
231 audit process and any findings made. The Independent Oversight Committee shall cause a
232 summary of the annual report to be published in a local newspaper and ensure that the report and
233 annual audit are available online and are delivered to every library located within the County for
234 public review. The Independent Oversight Committee shall hold a public hearing on each audit
235 and annual report and shall report the comments of the public to each Agency.

236 (4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and
237 forward them to the appropriate Agency for consideration.

238 **SECTION 3. SEVERABILITY.**

239 If any provision of this Ordinance or the application thereof to any person or
240 circumstance is held invalid, the invalidity shall not affect other provisions or applications
241 of this Ordinance which can be given effect without the invalid provisions or applications.
242 To this end, the provisions of this Ordinance are declared severable.
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244 **SECTION 4. CONFLICTS.**

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246 All ordinances or parts of ordinances in conflict herewith are hereby superseded or
247 repealed to the extent of such conflict.
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249 **SECTION 5. INCLUSION IN THE HILLSBOROUGH COUNTY CODE.**

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251 The provisions of this Ordinance shall be included and incorporated in the
252 Hillsborough County Code as an addition or amendment thereto, and shall be appropriately
253 renumbered to conform to the uniform numbering system of the Hillsborough County
254 Code.
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256 **SECTION 6. EFFECTIVE DATE.**

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258 This Ordinance shall be effective upon filing with the Florida Department of State.
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SECTION 7. FILING.

The Clerk is directed to file a certified copy of this Ordinance with the Florida Department of State within ten (10) days after enactment.

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

I, Pat Frank, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an ordinance adopted by the Board at its regular meeting of _____, 2019, as the same appears of record in Minute Book ____ of the Public Records of Hillsborough County, Florida.

WITNESS my hand and official seal this ____ day of _____, 2019.

PAT FRANK,
CLERK OF CIRCUIT COURT

By: _____
Deputy Clerk

APPROVED BY COUNTY ATTORNEY
AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Chief Assistant County Attorney