

**FIRST AMENDMENT TO MASTER INTERLOCAL AGREEMENT REGARDING
DISTRIBUTION FORMULA FOR ALLOCATION OF
REVENUE FROM LOCAL OPTION FUEL TAX LEVIED
PURSUANT TO SECTION 336.025(1)(a) AND 336.025(1)(b), FLORIDA
STATUTES, AMONG LEE COUNTY, CITY OF BONITA SPRINGS,
CITY OF CAPE CORAL, CITY OF FORT MYERS, CITY OF SANIBEL,
TOWN OF FORT MYERS BEACH AND VILLAGE OF ESTERO**

This Interlocal Agreement is entered into by and among: LEE COUNTY, a political subdivision of the State of Florida (“County”), CITY OF BONITA SPRINGS, CITY OF CAPE CORAL, CITY OF FORT MYERS, CITY OF SANIBEL, TOWN OF FORT MYERS BEACH, and VILLAGE OF ESTERO, all municipal corporations organized and existing under the laws of the State of Florida (collectively referred to as the “Municipalities”) (County and Municipalities are collectively referred to as the “Parties”).

RECITALS

WHEREAS, Section 336.025(1)(a), Florida Statutes, authorizes the County to levy and re-impose, in addition to other taxes allowed by law, a six-cent local option fuel tax, upon every gallon of motor fuel and special fuels sold in the county and taxed under Chapter 206, Florida Statutes; and

WHEREAS, Lee County adopted Ordinance 19-06 re-imposing the six-cent (6 cent) fuel tax becoming effective from September 1, 2019 to August 31, 2049; and

WHEREAS, Section 336.025(1)(b), Florida Statutes, authorizes the County to levy and re-impose an additional five-cent (5 cent) local option fuel tax upon every gallon of motor fuel sold in a county and taxed under the provision of Chapter 206, Florida Statute; and

WHEREAS, the County adopted Ordinance 19-07 re-imposing the additional five-cent (5 cent) fuel tax becoming effective from September 1, 2019 to August 31, 2049; and

WHEREAS, Section 336.025(1)(b)(2), Florida Statutes, authorizes the County to enter into interlocal agreements with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, setting forth a distribution formula for dividing the entire proceeds of the taxes among county government and all eligible municipalities within the county; and

WHEREAS, the County and Municipalities entered into an Interlocal Agreement Relating to Local Option Fuel Tax that expires December 31, 2022, setting forth a formula for distribution of the six-cent and five-cent local option fuel tax; and

WHEREAS, the Municipalities desire to continue the Interlocal Agreement with each other and with the County in order to distribute the proceeds of the five-cent and six-cent local option fuel tax; and

NOW, THEREFORE, IN CONSIDERATION, of the mutual terms, understandings, conditions, premises and covenants hereinafter set forth, and pursuant to Section 336.025, Florida Statutes, the County and Municipalities hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and incorporated herein.

2. **Authority.** The County and Municipalities enter into this Interlocal Agreement pursuant to the authority provided by Section 336.025, Florida Statutes.
3. **Scope of Agreement.** This Agreement shall apply to the six-cent gas tax authorized in Section 336.025(1)(a), Florida Statutes, as well as the additional five-cent gas tax authorized by Section 336.025(1)(b), Florida Statutes.
4. **Effective Date.** This Agreement shall be effective and continue from and including January 1, 2023, through and including December 31, 2027.
5. **Existing Agreements.** The previous Agreements between the Parties relating to local option fuel tax or gas tax shall be terminated and be of no further force or effect and replaced by this Agreement upon its Effective Date.
6. **Distribution of Proceeds.** The County and Municipalities agree that from January 1, 2023 to December 31, 2027, the proceeds of the local option gas taxes levied upon every gallon of motor fuel and diesel fuel sold in Lee County shall be distributed between the County and Municipalities using a blended percentage allocation of each entity's maintained centerline miles of roadways as a percent of total maintained roadways and each entity's population as a percentage of the county's total population. Centerline miles and population will be weighted 50%/50% for the blended percentage allocation (see Attachment A).
 - 6.1 The population figures for the Municipalities will be based upon the latest University of Florida Bureau of Economics and Business Research ("BEBR") population figures, pursuant to Section 336.025, Florida Statutes, as may be amended.
 - 6.2 The County shall forward the finalized allocation percentages to the State of Florida Department of Revenue for distributing the proceeds of the local option gas tax in accordance with the distribution formula established pursuant to this Agreement.
 - 6.3 Any new municipality incorporated in the County during the term of this Agreement, which is eligible for participation in the distribution of the local option gas tax shall result in recalculation of the fifty percent (50%) of the proceeds based on the total population distribution among each Municipality and unincorporated Lee County, and fifty percent (50%) of the proceeds based upon centerline miles of roadway maintained by Lee County and each Municipality. Such redistribution shall become effective upon entering into an agreement with the new municipality.
 - 6.4 The Parties agree and confirm that all Local Option Gas Tax proceeds, as distributed by the State pursuant to this Agreement, will be utilized for only those purposes and uses as provided for by law.
7. **Ongoing Obligations.** This Interlocal Agreement is expressly contingent upon the County's continued levy by County Ordinances of the Local Option Gas Taxes as authorized by law, for the term of this Agreement. If the County's Local Option Gas Tax, for any lawful reason(s), is repealed, sunset, or otherwise terminated by the County as to their effectiveness, this Interlocal Agreement will automatically terminate and shall be of no further force or effect.

- 8. Amendment To Agreement.** This Interlocal Agreement may be modified or terminated only by agreement in writing and approved by the Parties.
- 9. Integration of Document.** This Interlocal Agreement, including any incorporated exhibits or amendments, constitutes the entire Agreement between the Parties and shall supersede and control over any or all prior Agreements or understandings, written or oral, relating to the matters herein.
- 10. Notices.** Whenever any Party desires to give notice to any other Party or Parties, such notice must be in writing, mailed, and sent by email to the designated representative(s) of the respective Parties. Any Party may change its designated representative(s) for notice purposes by providing notice thereof to all other Parties in accordance with this paragraph.
- 11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, but such counterparts shall together constitute one and the same instrument.
- 12. Ineligibility.** If, during the term of the imposition of this local option gas tax, any of the Municipalities become ineligible to receive a share of the proceeds of the local option gas tax for any reason, any funds otherwise undistributed because of such ineligibility shall be distributed by the Florida Department of Revenue to the remaining Municipalities in proportion to the distribution formula then in effect.
- 13. Miscellaneous.**
 - A.** The Parties represent that they have full authority to enter into and execute this Interlocal Agreement.
 - B.** The terms and conditions of this Interlocal Agreement shall extend to and bind the successors and assigns of the County and the Municipalities.
 - C.** The drafting of this Interlocal Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other.
 - D.** The invalidity of any provision hereof as may be found by a court of competent jurisdiction shall in no way affect or invalidate the remaining provisions of the Agreement.
 - E.** In no case shall the Parties be liable for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, or any other damages of any kind relating to this Agreement.
 - F.** Disputes arising under this Interlocal Agreement shall be resolved pursuant to Florida law. Venue shall be the Twentieth Judicial Circuit Court, in Lee County, Florida.

IN WITNESS WHEREOF, the Parties hereto have cause this Interlocal Agreement to be executed on the respective dates under each signature.

ATTEST: LINDA DOGGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Cecil L Pendergrass, Chairman

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: _____
Office of the County Attorney

Date: _____

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Clerk, Town of Fort Myers Beach

By: _____
Ray Murphy, Mayor

APPROVED AS TO FORM:

By: _____
Town Attorney

Date: _____

ATTEST:

CITY OF FORT MYERS

By: _____
Clerk, City of Fort Myers

By: _____
Kevin B. Anderson, Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

ATTEST:

CITY OF CAPE CORAL

By: _____
Clerk, City of Cape Coral

By: _____
John Gunter, Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

ATTEST:

CITY OF BONITA SPRINGS

By: _____
Clerk, City of Bonita Springs

By: _____
Rick Steinmeyer, Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

ATTEST:

VILLAGE OF ESTERO

By: _____
Clerk, Village of Estero

By: _____
Katy Errington, Mayor

APPROVED AS TO FORM:

By: _____
Village Attorney

Date: _____

ATTEST:

CITY OF SANIBEL

By: _____
Clerk, City of Sanibel

By: _____
Holly D. Smith, Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____