

**1. Requested Motion:**

**Meeting Date:** Sept. 16, 2013

Approve the Third inter-local Agreement for Distribution of Local Option Gas Taxes by and between Lee County and the Town of Fort Myers Beach

**Why the action is necessary:**

Authorize the Town to enter into an Inter-local agreement with Lee County regarding gas tax revenue.

**What the action accomplishes:**

Approval of this Inter-local agreement provides the framework for future distribution of local option gas taxes to the Town.

**2. Agenda:**

- Consent
- Administrative
- Public Hearing

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other

**4. Submitter of Information:**

- Council
- Town Staff - Town Manager
- Town Attorney

**5. Background:**

Certain gas tax monies are distributed by the State to the County each year. The County and Town have agreed upon a specified percentage of those revenues to be allocated to the Town. The distribution amount to the Town in the 2009 agreement was 1.02% and that amount has increased to 1.17%. The agreement is for a period of five years ending September 30, 2018 at which time the agreement must be re-negotiated and approved. The documents have been reviewed by the Town Attorney

**ATTACHMENTS:**

- Inter-local Agreement
- Local Option Gas Tax Distribution Scenarios *(from Lee County)*

**6. Alternative Action:**

Decline participation in the Inter-local Agreement

**7. Management Recommendations:**

Authorize the Town to enter into the Third Inter-local Agreement for Distribution of Local Options Gas Taxes between Lee County and the Town of Fort Myers Beach.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

**THIRD INTERLOCAL AGREEMENT FOR  
DISTRIBUTION OF LOCAL OPTION GAS TAXES  
BY AND BETWEEN  
LEE COUNTY AND THE TOWN OF FORT MYERS BEACH**

THIS THIRD INTERLOCAL AGREEMENT for Distribution of Local Option Gas Taxes made as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **LEE COUNTY**, a political subdivision and charter county of the State of Florida ("COUNTY"), and the **TOWN OF FORT MYERS BEACH**, a municipal corporation of the State of Florida ("TOWN"), collectively, "the Parties", hereto. It is created for the purpose of establishing a methodology and format for the division and distribution of certain Local Option Gas Taxes levied by County Ordinances within Lee County, pursuant to Chapter 336, relating to the 5 and 6 cents Local Option Gas Taxes. This Agreement will succeed the prior Agreement dated March 3, 2009, as amended on April 16, 2009, between the parties, which will expire on September 30, 2013.

**RECITALS**

**WHEREAS**, the TOWN and the COUNTY entered into an Interlocal Agreement dated July 8, 2003 regarding the allocation of the Local Option Gas Taxes; and,

**WHEREAS**, the TOWN and the COUNTY entered into a Second Interlocal Agreement dated March 3, 2009, as amended on April 16, 2009, that replaced the first Interlocal Agreement regarding the allocation of the Local Option Gas Taxes; and,

**WHEREAS**, it is in the public interest of both the TOWN and the COUNTY to adopt a new Agreement providing the method of distribution of local option gas tax to replace the Second Interlocal Agreement, which is set to expire on September 30, 2013; and,

**NOW THEREFORE**, in consideration of the above premises and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the TOWN and the COUNTY hereby agree to enter into this Third Interlocal Agreement as follows:

**SECTION I            INCORPORATION OF RECITALS**

The Recitals as set forth above are incorporated into the terms of this Agreements as if set out herein at length.

**SECTION II**                      **ANNUAL LOCAL OPTION GAS TAX DISTRIBUTION:**

<b><u>Recipient</u></b>	<b><u>Percentage of Distribution</u></b>
City of Bonita Springs	4.54%
City of Cape Coral	24.95%
City of Fort Myers	14.00%
Town of Fort Myers Beach	1.17%
City of Sanibel	5.00%
Lee County	50.34%
Total	100.00 %

**SECTION III**                      **TERM OF AGREEMENT**

This Interlocal Agreement for the annual distribution of Local Option Gas Taxes to the TOWN shall be effective as of October 1, 2013 through September 30, 2018, both dates inclusive.

**SECTION IV**                      **ALLOCATION AND DISTRIBUTION TO TOWN**

A. The base percentage allocation of the Local Option Gas Taxes to the TOWN has been calculated using a formula consisting of fifty percent (50%) from the centerline miles of roadways maintained by the TOWN and fifty percent (50%) from the population of the TOWN, in proportion to the centerline miles of all roadways maintained by all municipalities and Lee County and the total population of all the municipalities and unincorporated Lee County. The population figure of the TOWN has been calculated using both year-round population and seasonal population. The year-round population, assumed to be from April 1 through October 31 (7 months), is based upon the April, 2012 edition of "Florida Population Studies" (University of Florida Bureau of Economic Research, Warrenton College of Business). The seasonal population assumed to be from November 1 through March 30 (5 months), is based upon the 2010 Census Table DP-1 - Seasonal Recreational and Occasional Use Dwelling Units for Fort Myers Beach multiplied by the Population Per Dwelling Unit for Fort Myers Beach from Table DP-1 reduced by an occupancy rate of 92%. The resulting seasonal figure is then combined with the year-round figure to create a blended annual base percentage rate which shall be in effect for the term of this Agreement. Pursuant to the combined population figures above and centerline miles, the TOWN'S annual percentage allocation of Local Option Gas Taxes for the term of this Agreement shall be a blended rate of 1.17% of the total proceeds as distributed by the State of Florida Department of Revenue for unincorporated Lee County and all municipalities within Lee County.

B. The COUNTY shall submit the allocation to the Florida Department of Revenue each year (1.17%). The annual distribution will be distributed to the TOWN directly

from the Florida Department of Revenue.

**SECTION V            TOWN AND COUNTY COVENANTS**

Each party agrees and confirms to the other 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.

**SECTION VI            BOND COVENANTS**

A.     At no time, and under no circumstances shall the agreed-upon formula or distribution of Local Option Gas Tax proceeds to the TOWN under this Interlocal Agreement materially adversely affect or impact the rights of the bond holders of any outstanding Lee County Transportation Bonds, which are supported in whole or in part by the Local Option Gas Tax proceeds authorized by Section 336.025, Florida Statutes, and as distributed herein.

B.     Additionally, the amounts distributed to the TOWN shall not at any time reduce the COUNTY'S proceeds required to meet its payments of principal and interest, and reserves for such principal and interest payments required under any outstanding Lee County Transportation Bond Resolutions as of the date hereof.

**SECTION VII            ONGOING OBLIGATIONS**

A.     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.

B.     If the COUNTY Local Option Gas Tax Ordinances are, for any lawful reason(s) repealed, sunset or otherwise terminated by the COUNTY as to their effectiveness, then this Interlocal Agreement will automatically terminate and shall be of no further force or effect.

**SECTION VIII            AMENDMENT TO AGREEMENT**

This Interlocal Agreement may only be amended as provided for herein, with the express consent of both Parties and executed with the same formality and dignities as this original Agreement.

**SECTION IX            INTERPRETATION OF AGREEMENT**

This Interlocal Agreement shall be construed and interpreted according to the laws, rules and regulations of the TOWN, the COUNTY and the State of Florida.

**SECTION X            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, either written or oral, relating to the matters herein.

**SECTION XI**            **NOTICE PROVISIONS**

All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

Lee County:	Lee County Board of County Commissioners Post Office Box 398 Fort Myers, Florida 33902-0398 Attention: County Manager
Town of Fort Myers Beach:	Town Council, Town of Fort Myers Beach 2523 Estero Boulevard Fort Myers Beach, Florida 33931 Attention: Town Manager

The address to which any notice or demand may be given to either party may be changed in writing.

**SECTION XII**            **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 TOWN.
- 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 either Party be liable to the other 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, Fla.

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed on the day and year first written above.

**ATTEST: CLERK, TOWN OF  
FORT MYERS BEACH**

**TOWN OF FORT MYERS BEACH**

BY: \_\_\_\_\_  
Clerk

BY: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Town Attorney

**ATTEST: LINDA DOGGETT  
CLERK OF COURTS**

**BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA**

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Chair

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Office of the County Attorney

LOCAL OPTION GAS TAX (LOGT) DISTRIBUTION SCENARIOS  
 UPDATE, AUGUST 1, 2013

SEASONAL ADJUSTMENT FACTOR INCLUDED USING 2010 CENSUS

	POPULATION Includes Seasonal Population 2000 Census	CURRENT THROUGH FY12-13	BASED UPON CENTERLINE MILES REVISED FEBRUARY, 2013	BASED UPON 50/50 SPLIT BETWEEN CENTERLINE MILES AND APRIL 1, 2012 POPULATION	REVISED ALLOCATION FOR FY13-14
	Population 1-Apr-12	Current Gas Tax Allocation	Centerline Miles Allocation	Percent Allocation	Percent Allocation
Cape Coral	175,793	24.95	1,601.00	28.39	24.95
Fort Myers	74,131	14.00	225.00	7.21	14.00
Sanibel	13,210	5.00	90.00	1.81	5.00
<b>Fort Myers Beach</b>	<b>14,173</b>	<b>1.02</b>	<b>23.00</b>	<b>1.17</b>	<b>1.17</b>
Bonita Springs	63,097	4.54	86.00	5.02	4.54
Lee County	426,684	50.49	2,703.00	56.40	50.34
	767,087	100.00	4,728.00	100.00	100.00

5 months	0.486263
7 months	0.660768
Blended Rate	1.167031

	2010 Census Seasonal Recreational Occas. Use Table DP-1	2010 Census Population Per Dwelling Unit Table DP-1	Occupancy Rate	Derived Seasonal Population	Total Seasonal Permanent
Cape Coral	6,706	2.53	0.92	15,609	
Fort Myers	3,346	2.37	0.92	7,296	
Sanibel	3,805	1.92	0.92	6,721	
Fort Myers Beach	4,756	1.81	0.92	7,920	
Bonita Springs	8,918	2.19	0.92	17,968	
Lee County	34,606	2.31	0.92	73,545	
<b>TOTAL</b>	<b>62,137</b>			<b>129,058</b>	<b>people</b>