



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Miscellaneous

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J.2.

7/23/2024

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### Subject:

Approval of ballot language, legislative intent and permission to advertise a Save Our Indian River Lagoon Infrastructure Sales Surtax ordinance to place a referendum on the November 5, 2024 ballot, and re-negotiating the existing municipal interlocal agreement for the sales tax.

### Fiscal Impact:

No fiscal impact until 2027 and then only if the referendum is approved to be on the ballot by the Board and then is approved by the voters. There will be no impact to the general fund or other funds other than those collected through the proposed surtax if approved.

### Dept/Office:

District 5 Commission Office

### Requested Action:

It is requested that the Board of County Commissioners:

1. Review and approve ballot language (Attachment A) to place a referendum for a ten-year extension of the Save Our Indian River Lagoon Infrastructure Sales Surtax on the November 5, 2024 ballot;
2. Approve legislative intent and permission to advertise an ordinance amending the Brevard County Code, Article X, Save Our Indian River Lagoon Infrastructure Sales Surtax (draft ordinance is Attachment B);
3. Direct staff to amend to extend the existing municipal interlocal agreement regarding use and distribution of the sales tax and authorize the Chair to execute once negotiations are complete (current interlocal agreement is Attachment C).

### Summary Explanation and Background:

In January through March 2016, Brevard County residents endured the most extensive and intensive algal bloom ever recorded in the Indian River system during winter to spring months. The collapse of this bloom in March resulted in one of the most extensive fish kills ever recorded in the county. The 2016 bloom and fish kill followed a 2011 algal super bloom, brown tides in 2012, 2013 and 2015, and unusual mortality events for dolphins, manatees and pelicans.

On March 29, 2016, the Board of County Commissioners voted to send a letter to the Governor requesting assistance. The Governor sent the leadership of multiple state agencies to assess the fish kill and meet with County staff and members of the Legislative delegation to discuss solutions and resource needs. The County was advised to develop a project plan to include a comprehensive list of projects to restore lagoon health, estimate the funding needs for those projects and determine a timetable for implementation. With such a plan, the County would be in a better position to seek cost-share from the FL Legislature.

On April 7, 2016, the County Commission directed staff to develop a Save Our Lagoon Project Plan to restore health to the lagoon and explore dedicated funding mechanisms to fund the entire plan or provide the local match needed to leverage State appropriations and other grants.

On August 9, 2016, the Board of County Commissioners heard extensive testimony on the need for and economic benefits anticipated from establishing a trust fund dedicated to restoring health to the Indian River Lagoon. After considering multiple funding options, the Board voted unanimously to approve the initial Save Our Indian River Lagoon Project Plan, Legislative intent and permission to advertise an ordinance for a half-cent infrastructure sales tax for this purpose, authorized staff to negotiate an interlocal sale tax use and distribution agreement with cities representing a majority of the county's municipal population, and approved ballot language.

On August 23, 2016, the Board of County Commissioners adopted the ordinance for a half-cent infrastructure sales tax to fund the implementation of the Save Our Indian River Lagoon Project Plan and to place a Referendum on the November 8, 2016, ballot for a half cent infrastructure sales tax and authorized the Chair to execute an interlocal sales tax use and distribution agreement with cities representing a majority of the County's municipal population.

On November 8, 2016, the half-cent infrastructure sales tax was approved by a majority vote of the electors of Brevard County to be levied for the period of January 1, 2017, to December 31, 2026.

Interlocal sales tax use and distribution agreements were executed between the County and every city and town in the County, thus representing the entire County population. These agreements also specify the distribution of Basin Management Action Plan nutrient removal credits verified by the state for projects funded with the half-cent infrastructure sales tax.

The Save Our Indian River Lagoon Project Plan has been updated annually with changes recommended by a Citizen Oversight Committee and adopted by the County Commission. The Project Plan includes a portfolio of projects to **Reduce** primary sources of pollution (including excess fertilizer, septic systems, nutrient rich reclaimed water, and stormwater); **Remove** historical pollution that is now accumulated in muck deposits that smother seagrass, cloud the water column, release nutrients and deplete oxygen; **Restore** natural stabilization and filtration systems (including oyster bars and living shorelines); and a process to monitor project implementation, efficiency, and cost-effectiveness with a volunteer citizen oversight committee to **Respond** to monitoring data, new technology, changing conditions, alternative project proposals and recommend plan revisions to the County Commission annually. The projected cost of the adopted project plan is \$585,714,326.

The current surtax expires December 31, 2026. While progress is underway, dedicated funding into the future will continue to position the County to leverage state and federal cost-share to plan and implement projects and programs that reduce and remove pollution, improve water quality, and restore fish and wildlife abundance and habitat in the Indian River Lagoon. If authorized by the Board of County Commissioners and approved by a majority of the electors of Brevard County voting in a referendum on the surtax, the surtax would be extended for a ten-year period commencing January 1, 2027 and ending December 31, 2036.

### **Clerk to the Board Instructions:**

Upon approval by the Board, execution by the Chair, and attestation by the Clerk, file the ordinance with the

Department of State as required by law within the 10-day deadline, provide copies to the Florida Department of Revenue, the Supervisor of Elections, and the Florida Office of Program Policy Analysis and Government Accountability in accordance with applicable law, and forward a copy of the ordinance to the County Manager's Office, County Attorney's Office and Natural Resources Management Department.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Kimberly.Powell@brevardclerk.us

July 24, 2024

**MEMORANDUM**

**TO:** Commissioner Jason Steele, District 5

**RE:** Item J.2., Approval of Ballot Language, Legislative Intent and Permission to Advertise a Save Our Indian River Lagoon (SOIRL) Infrastructure Sales Surtax Ordinance to Place a Referendum on the November 5, 2024, Ballot, and Renegotiating the Existing Municipal Interlocal Agreement for the Sales Tax

The Board of County Commissioners, in regular session on July 23, 2024, denied the request to approve the ballot language to place referendum for a 10-year extension of the SOIRL Infrastructure Sales Surtax on the November 5, 2024, ballot; denied legislative intent and permission to advertise an ordinance amending the Brevard County Code, Article X, SOIRL Infrastructure Sales Surtax; and denied the request to direct staff to amend and extend the existing municipal Interlocal Agreement regarding use and distribution of the sales tax.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

**cc:** Natural Resources Management  
Commission Districts 1, 2, 3, and 4  
County Attorney

BALLOT

Brevard County, Florida

**Title:** EXTENSION OF THE SAVE OUR INDIAN RIVER LAGOON HALF-CENT  
SALES TAX THROUGH DECEMBER 31, 2036

To restore the Indian River Lagoon through infrastructure, capital improvements, and capital maintenance projects and programs designed to reduce pollution, remove muck, and improve water quality and marine habitat for fish and wildlife, shall Brevard County extend the ½ cent Save Our Indian River Lagoon sales tax for ten years beginning January 1, 2027 and require deposit of all revenue in a trust fund for such purposes, with citizen committee oversight and annual independent audits?

\_\_\_ FOR the ½ cent sales tax

\_\_\_ AGAINST the ½ cent sales tax

**ORDINANCE 2024-\_\_\_\_**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, REGARDING THE HALF-CENT LOCAL GOVERNMENT INFRASTRUCTURE SURTAX KNOWN LOCALLY AS THE SAVE OUR INDIAN RIVER LAGOON SALES SURTAX; PROVIDING FOR THE EXTENSION OF THE LEVY OF THE SURTAX THROUGH DECEMBER 31, 2036, SUBJECT TO THE APPROVAL BY A MAJORITY VOTE OF THE ELECTORS OF THE COUNTY VOTING IN A REFERENDUM ON THE SURTAX, FOR THE PURPOSE OF FUNDING THE COUNTY'S SHARE OF THE COST FOR THE SAVE OUR INDIAN RIVER LAGOON PROGRAM; AMENDING CHAPTER 46, ARTICLE X, BREVARD COUNTY CODE; AMENDING SECTION 46-399. – SAVE OUR INDIAN RIVER LAGOON PROJECT TRUST FUND, BREVARD COUNTY CODE TO PROVIDE FOR THE DEPOSIT OF ALL SURTAX REVENUES IN A TRUST FUND AND RESTRICTION OF TRUST FUND EXPENDITURES; AMENDING SECTION 46-401. – EFFECTIVE DATE, BREVARD COUNTY CODE, TO PROVIDE FOR THE EXTENSION OF THE LEVY OF THE SURTAX THROUGH DECEMBER 31, 2036; PROVIDING FOR A REFERENDUM; PROVIDING FOR NOTICE OF THE REFERENDUM; PROVIDING FOR BALLOT LANGUAGE; PROVIDING CONDITIONS TO THE HOLDING OF SUCH REFERENDUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE; PROVIDING FOR EFFECTIVE DATES, FILING AND NOTICES, AND REPEAL.**

**WHEREAS**, in January through March 2016, Brevard County residents endured the most extensive and intensive algal bloom ever recorded in the Indian River system during winter to spring months; and

**WHEREAS** the collapse of this bloom in March resulted in one of the most extensive fish kills ever recorded in the county; and

**WHEREAS** the 2016 bloom and fish kill followed a 2011 algae super bloom, brown tides in 2012, 2013 and 2015, and unusual mortality events for dolphins, manatees and pelicans; and

**WHEREAS**, on August 9, 2016, the Board of County Commissioners heard extensive testimony on the need for and economic benefits anticipated from establishing a trust fund dedicated to restoring health to the Indian River Lagoon, considered multiple funding options, and voted unanimously to approve a Save Our Indian River Lagoon Project Plan, advertise an ordinance for a half-cent infrastructure sales tax for this purpose, approved ballot language, and authorized staff to negotiate an interlocal sales tax use and distribution agreement with cities representing a majority of the county's municipal population; and

**WHEREAS**, on August 23, 2016, the Board of County Commissioners adopted Ordinance No. 2016-15 (the "Original Save Our Indian River Lagoon Surtax Ordinance") for a half-cent

infrastructure sales tax to fund the implementation of the Save Our Indian River Lagoon Project Plan and to place a Referendum on the November 8, 2016, ballot for a half-cent infrastructure sales tax and authorized the Chair to execute an interlocal sales tax use and distribution agreement with cities representing a majority of the County's municipal population; and

**WHEREAS**, on November 8, 2016, the half-cent infrastructure sales tax was approved by a majority vote of the electors of Brevard County to be levied for the period of January 1, 2017, to December 31, 2026; and

**WHEREAS** an interlocal sales tax use and distribution agreement was executed between the County and every city and town in the County, thus representing the entire County population; and

**WHEREAS** the Save Our Indian River Lagoon Project Plan has been updated annually with changes recommended by a Citizen Oversight Committee and adopted by the County Commission to reduce sources of pollution, remove accumulations of pollution, restore naturally filtering ecosystems, and respond to new information and opportunities; and

**WHEREAS**, the current surtax expires December 31, 2026, and while progress is underway, extending dedicated funding into the future will continue to position the County to leverage state and federal cost-share to design and implement projects and programs that reduce and remove pollution, improve water quality, and restore fish and wildlife abundance and habitat in the Indian River Lagoon; and

**WHEREAS**, the Board of County Commissioners of Brevard County finds that a referendum on whether to extend the surtax is prudent, best serves the public interest, and serves both a county purpose and a public purpose;

**NOW, THEREFORE, BE IT ORDAINED** BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. AMENDMENTS TO SECTION 46-399. – SAVE OUR INDIAN RIVER LAGOON PROJECT TRUST FUND, BREVARD COUNTY CODE.** Effective January 1, 2027, Chapter 46, Article X. – Save Our Indian River Lagoon Sales Surtax, Section 46-399 of the Brevard County Code, is hereby amended to read as follows (additions are indicated by underline text; deletions are indicated by ~~striketrough~~ text):

**Sec. 46-399. - Save Our Indian River Lagoon Project Trust Fund.**

~~If the county electorate approves the ½ cent infrastructure sales surtax provided for in this article, the county manager, or his designee in cooperation with the~~

~~board finance division of the office of the clerk of the circuit court, shall create a trust fund reserved solely for the deposit of revenues derived from the approved tax and any other funds received for purposes of implementing the Save Our Indian River Lagoon Project Plan. Thereafter, all~~ All revenues collected from the ~~tax~~ ½-cent infrastructure sales surtax provided for in this article and any other funds received for purposes of implementing the Save Our Indian River Lagoon Project Plan shall be deposited into the trust fund created and reserved solely for such purpose, and shall be distributed in the manner provided for in the interlocal agreement required under ~~F.S. §~~ section 212.055(2)(c)1., Florida Statutes. Trust fund expenditures shall be restricted to:

- (1) Reasonable and necessary capital improvement, ~~capital~~ maintenance and other projects and programs implementing the Save Our Indian River Lagoon Project Plan, as adopted by the board of county commissioners and amended from time to time. Reasonable and necessary expenses may include lagoon restoration project permitting costs and the costs of experts used in obtaining or consulting on the acquisition of such permits;
  - a. ~~The Save Our Indian River Lagoon Project Plan, as adopted hereunder or as amended from time to time;~~
  - b. ~~The Indian River Lagoon Conservation and Management plan, as amended from time to time and incorporated into the Save Our Indian River Lagoon Project Plan; and/or~~
  - c. ~~With the approval of the board of county commissioners, the costs of any lagoon restoration project or program identified and pursued in accordance with any future plan, as amended from time to time and incorporated into the Save Our Indian River Lagoon Project Plan enacted by the Indian River Lagoon council created pursuant to the Indian River Lagoon National Estuary Program Interlocal Agreement dated February 19, 2015. Such reasonable and necessary expenses may include lagoon restoration project permitting costs and the costs experts used in obtaining or consulting on the acquisition of such permits;~~
- (2) Costs of issuing bonds, including financial advisor fees; bond counsel fees; and bond validation attorneys and expert witness fees, if any are utilized;



(3) Lagoon restoration project related costs, if any, contemplated by the interlocal agreement required by ~~F.S. §~~ section 212.055(2), Florida Statutes;

(4) Any reasonable lagoon restoration related project or expense approved by the board of county commissioners, at its discretion, upon recommendation by the Save Our Indian River Lagoon oversight committee established hereunder;

(5) Save Our Indian River Lagoon Project Plan restoration project related operation and maintenance expenses;

(6) Save Our Lagoon Project Plan education and **community** awareness initiatives or programs;

(7) Any membership dues payable to the Indian River Lagoon council.

Such expenditures shall be made in accordance with established county contract, bidding and authorized administrative expense limitations, as set forth in board policies and county manager administrative orders.

Such expenditures may include use for grant matching funds for federal, state or private contributions pledged for paying expenses or costs related to lagoon restoration projects, or repayment of bonds, if any, issued for financing the cost of capital improvement or capital maintenance projects related to the restoration of the Indian River Lagoon.

**SECTION 2. AMENDMENTS TO SECTION 46-401. – EFFECTIVE DATE, BREVARD COUNTY CODE.** Effective January 1, 2027, Chapter 46, Article X. – Save Our Indian River Lagoon Sales Surtax, Section 46-401 of the Brevard County Code, is hereby amended to read as follows (additions are indicated by underline text; deletions are indicated by ~~striketrough~~ text):

**Sec. 46-401. - Effective date and duration of infrastructure surtax.**

The ½ cent infrastructure sales surtax authorized in section 46-398 shall be effective commencing January 1, 2017, and continuing through December 31, 2036. ~~The ordinance from which this article is derived shall take effect upon November 5, 2016 if the ½ cent sales tax is approved by a majority of the electors of the county voting in the referendum on that date. However, the ordinance from which this article is derived shall not be implemented until such time as:~~

- ~~(1) The supervisor of elections has consented to obtaining and making registration books available in accordance with F.S. § 100.151;~~
- ~~(2) Election results demonstrate an affirmative vote of the majority of the electors has approved the Save Our Indian River Lagoon ½ cent sales tax; and~~
- ~~(3) Prior to November 8, 2016, the governing bodies representing at least 50 percent of the municipal population in the county have approved an interlocal agreement consistent with the distribution of all proceeds to the trust fund created by the ordinance from which this article is derived, provided the levy of the ½ cent surtax provided for in section 46-398 will commence on January 1, 2017.~~

**SECTION 3. REFERENDUM.** A referendum election is hereby called and ordered to be held in Brevard County at the time of the next general election to be held on November 5, 2024 to determine whether the Board of County Commissioners should continue to levy a ½ cent sales tax for financing the County's share of the cost for the Save Our Indian River Lagoon Program to implement the project plan.

**SECTION 4. NOTICE OF REFERENDUM.** Notice of the referendum shall be published in a newspaper of general circulation in the County or on the County's website as provided in section 50.0311, Florida Statutes, at least twice, once in the fifth week and once in the third week prior to the week in which the referendum is held, the date of first publication in said newspaper to be at least thirty (30) days before said referendum, in the manner provided in section 100.342, Florida Statutes.

**SECTION 5. NOTICE TO SUPERVISOR OF ELECTIONS.** Upon adoption of this ordinance, notice of the calling of the referendum election provided for in this Ordinance shall be delivered to the Supervisor of Elections. This Ordinance shall not be implemented unless the Supervisor of Elections provides his consent to a date when the registration books can be available pursuant to Section 100.151, Florida Statutes.

**SECTION 6. PLACES OF VOTING, INSPECTORS, CLERKS.** The polls will be open at the voting places on the date of the referendum during the times prescribed by law. All qualified electors residing within the County shall be entitled and permitted to vote at the referendum on the proposition set forth below. The places of voting and the inspectors and clerk for the referendum shall be those designated by the Supervisor or Elections of Brevard County.

**SECTION 7. OFFICIAL BALLOT.** Ballots to be used in the referendum shall contain a statement of the description of the proposed Save Our Indian River Lagoon ½ Cent Sales Tax Referendum and shall be in substantially the following form:

BALLOT

Brevard County, Florida

**Title:** EXTENSION OF THE SAVE OUR INDIAN RIVER LAGOON HALF-CENT  
SALES TAX THROUGH DECEMBER 31, 2036

To restore the Indian River Lagoon through infrastructure, capital improvements, and capital maintenance projects and programs designed to reduce pollution, remove muck, and improve water quality and marine habitat for fish and wildlife, shall Brevard County extend the ½ cent Save Our Indian River Lagoon sales tax for ten years beginning January 1, 2027 and require deposit of all revenue in a trust fund for such purposes, with citizen committee oversight and annual independent audits?

\_\_\_ FOR the ½ cent sales tax

\_\_\_ AGAINST the ½ cent sales tax

**SECTION 8. ABSENTEE VOTING.** The form of ballots to be used in such referendum for absentee voters shall be the same as used at the polling places for said referendum or such other form as may be prescribed by law.

**SECTION 9. PRINTING OF BALLOTS.** The Supervisor of Elections for Brevard County is hereby authorized and requested to (a) have sample ballots printed and to deliver such sample ballots to the inspectors and clerks on or before the date and time for opening of the polls for such referendum and (b) have official ballots for use in such referendum printed and delivered in accordance with law.

**SECTION 10. PAYMENT OF REFERENDUM EXPENSES.** The County Manager is hereby authorized and directed to approve the payment of lawful expenses associated with conducting the referendum election and the Clerk of the Board of County Commissioners is hereby authorized and directed to disburse the funds necessary to pay such expenses.

**SECTION 11. VOTER REGISTRATION BOOKS.** The Supervisor of Elections for Brevard County is hereby authorized and requested to furnish the poll workers, inspectors and clerks

required at each place where the votes are to be cast in such referendum, as well as applicable portions of the registration books or certified copies thereof showing the names of the qualified electors residing in the County.

**SECTION 12. ELECTION PROCEDURE.** The referendum shall be held and conducted in the manner prescribed by law and shall, as soon as practicable, be returned and canvassed in the manner prescribed by law. The result shall show the number of qualified electors who voted at such referendum and the number of votes cast respectively for and against approval of the proposition. Upon certification in the manner prescribed by law, the results shall be recorded in the minutes of the Board of County Commissioners.

**SECTION 13. LEVY OF ONE-HALF CENT SALES TAX FOR INDIAN RIVER LAGOON RESTORATION.** As authorized under section 212.055(2), Florida Statutes, and subject to section 19(b) below, beginning January 1, 2027, the levy of the one-half cent Save Our Indian River Lagoon Sales Surtax is hereby extended for a period of ten years, as specified in this Ordinance.

**SECTION 14. SAVINGS CLAUSE.** In the event the referendum provided for in Section 3 of this Ordinance is not approved by a majority vote of those voting on the question posed by the referendum, the levy of the Save Our Indian River Lagoon Sales Surtax pursuant to the Original Save Our Indian River Lagoon Surtax Ordinance shall remain in effect as originally provided in the Original Save Our Indian River Lagoon Surtax Ordinance, the proceeds of the Save Our Indian River Lagoon Sales Surtax shall continue to be used for the purposes provided in the Original Save Our Indian River Lagoon Surtax Ordinance and shall continue to be distributed as provided in the Original Save Our Indian River Lagoon Surtax Ordinance.

**SECTION 15. SEVERABILITY.** If any section, subsection, sentence, clause or provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 16. INCLUSION IN BREVARD COUNTY CODE.** It is intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida, and that the sections of this ordinances may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**SECTION 17. CONFLICTING PROVISIONS.** In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

**SECTION 18. REPEALING CLAUSE.** All ordinances or other actions of the County which are in conflict herewith are hereby repealed to the extent of such conflict or inconsistency.

**SECTION 19. EFFECTIVE DATES; FILING AND NOTICES; REPEAL.**

(a) This Ordinance shall be effective upon filing with the Florida Department of State. Immediately upon passage, the Clerk is directed to so file this Ordinance and to provide copies to the Florida Department of Revenue, the Supervisor of Elections, and the Florida Office of Program Policy Analysis and Government Accountability in accordance with applicable law. Subject to section 19(b) below, for purposes of authorizing the extension of the levy of the Save Our Indian River Lagoon Sales Surtax, this Ordinance shall take effect on January 1, 2027.

(b) The extension of the levy of the Save Our Indian River Lagoon Sales Surtax proposed by this Ordinance shall commence on January 1, 2027, only if approved by a "FOR" vote by a majority of those voting on the question posed at the November 5, 2024 referendum. If a majority of those voting on the question posed do not vote "FOR", the proposed renewal of the levy of the Save Our Indian River Lagoon Sales Surtax shall not be authorized and this Ordinance shall be of no further force and effect.

(c) The extension of the levy of the Save Our Indian River Lagoon Sales Surtax proposed by this Ordinance shall commence on January 1, 2027, only if each of the governing boards of Brevard County and the governing bodies of the municipalities representing a majority of the county's municipal population enter into an interlocal agreement providing for the distribution of the proceeds of the Save Our Indian River Lagoon Sales Surtax in accordance with section 212.055, Florida Statutes prior to January 1, 2027.

**ENACTED** this \_\_\_\_\_ day of August, 2024

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Rachel M. Sadoff, Clerk

By: \_\_\_\_\_  
Jason Steele, Chair

As approved by the Board on August \_\_, 2024

## **SAVE OUR INDIAN RIVER LAGOON LOCAL INFRASTRUCTURE SURTAX INTERLOCAL AGREEMENT**

This Save Our Indian River Lagoon Local Infrastructure Surtax Interlocal Agreement (the "Interlocal Agreement"), was made and entered into this 29 day of January, 2019, by and between The Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida ("County") and the Municipalities of Cape Canaveral, Cocoa, Cocoa Beach, Grant-Valkaria, Indialantic, Indian Harbour Beach, Malabar, Melbourne, Melbourne, Beach, Melbourne Village, Palm Bay, Palm Shores, Rockledge, Satellite Beach, Titusville, and West Melbourne, Florida, municipal corporations existing under the laws of the State of Florida ("City").

### **WITNESSETH**

**WHEREAS**, pursuant to the authority granted under Section 212.055(2)(a), Florida Statutes, Brevard County Ordinance No. 16-15 (the "Ordinance"), and the vote of a majority of the qualified electors of Brevard County in a referendum held on November 8, 2016, the County levied a countywide one-half cent discretionary Save Our Indian River Lagoon local infrastructure surtax (the "Surtax"), commencing on January 1, 2017, and continuing thereafter for a period of ten (10) years until December 31, 2027; and

**WHEREAS**, section 212.055(2)(c), Florida Statutes requires distribution of an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population in order to determine the distribution of the revenues derived from the half cent discretionary infrastructure sales tax in lieu of using the statutory formula set forth in section 218.62, Florida Statutes; and

**WHEREAS**, the County and several municipalities in Brevard County entered into such an interlocal agreement (the "Prior Agreement") in order to meet a deadline set by the Supervisor of Elections for submitting ballot language prior to the referendum held on November 8, 2016; and

**WHEREAS**, the parties to the Prior Agreement saw the urgent need to implement the "Save Our Indian River Lagoon Project Plan," with the aim to restore the Indian River Lagoon through financing, planning, constructing, maintaining, and operating capital improvements and capital maintenance projects and programs designed to improve water quality, fish, wildlife and marine habitat, remove muck and reduce pollution, as permitted under Section 212.055(2)(d)1., Florida Statutes; and

**WHEREAS**, the parties to the Prior Agreement deemed it in the best interest of all of the citizens, residents, and property owners of Brevard County that the proceeds of the Surtax be used to fund projects and programs designed to restore the Indian River Lagoon in the manner set forth in the Ordinance, including operations, maintenance and reasonable administrative costs of those projects and programs; and

**WHEREAS**, in the time since the Prior Agreement was entered, further concerns and considerations have been raised in regards to the distribution of Total Maximum Daily Load credits and potential permitting limitations for municipal signatories, making it desirable to modify the Prior Agreement.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual terms, conditions, promises, and covenants hereinafter set forth, the County and City agree to perform the following acts and to be bound by the following statements:

1. **RECITALS.** The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. **PRIOR AGREEMENT SUPERSEDED.** If the City was a party to the Previous Agreement, this Interlocal Agreement supersedes and replaces the Previous Agreement.

3. **USE AND DISTRIBUTION OF SURTAX.** It is the intent of the parties hereto that even though this Interlocal Agreement is separately executed by the County with multiple municipalities, that all of such separately executed agreements shall be construed to constitute a single Interlocal Agreement which provides for the use and distribution of the proceeds from the Surtax as follows:

- a. Any and all revenue generated by the Surtax shall continue to be deposited into the Save Our Indian River Lagoon Trust Fund, administered by the County, and used for restoration projects and programs in the manner prescribed in the Ordinance and the Save Our Indian River Lagoon Project Plan; and
- b. The Save Our Indian River Lagoon Citizen Oversight Committee, as established in the Ordinance, will assist the County with annual plan updates and may review any proposed capital improvement, project, program, audit or other matter presented to it by the Board of County Commissioners for a recommendation to the County Commission.

4. **MUNICIPAL PERMITTING NOT RESTRICTED.** Nothing in this Interlocal Agreement or the Save Our Indian River Lagoon Project Plan shall be read to limit any municipal signatory's ability to obtain permits from the Florida Department of Environmental Protection, the St. John River Water Management District, or any other governing and/or permitting authority.

5. **TOTAL MAXIMUM DAILY LOAD ("TMDL") CREDITS.**

- a. Any and all TMDL credits accrued as a result of Surtax expenditures made shall be distributed, to the extent permitted by law, between entities that have jurisdiction within the Florida Department of Environmental Protection (FDEP) Basin Management Action Plan (BMAP) watershed within which the project is located, and according to the following population-based distribution formula:

- i. The proportion for the county government shall be computed by dividing the sum of the unincorporated area population within the BMAP watershed where the project is located by the sum of the total population within that same BMAP watershed.
  - ii. The proportion for each municipal government shall be computed by dividing the population of that municipality within the BMAP watershed where the project is located by the sum of the total population within that same BMAP watershed.
  - iii. For the purposes of this section, until the census block data for the 2020 United States Census becomes available, population shall be calculated using the population estimates of local governmental units in Florida as of April 1, 2016, as published by the University of Florida Bureau of Economic and Business Research. See **Exhibit A** attached hereto for TMDL credit distributions based on 2016 population estimates.
  - iv. At such time as the census block data for the 2020 United States Census becomes available, and continuing thereafter, population shall be calculated by using the most recent census block data published by the United States Census Bureau.
- b. Should a project use both Surtax monies and contributions made by other government entities, such as a city, all TMDL credits accrued for the project will be distributed pro rata in the same ratio as the entity's contribution to the total project cost, if allowed by law, or as otherwise agreed to by the contributing entities. The formula in 5.a.i. through 5.a.iv. applies only to the distribution of TMDL credits accrued by expenditure of Surtax monies.
  - c. Should expenditures be made with grant monies, cost share contracts or legislative appropriations, whichever entity applied for and received the additional funds shall be the recipient of the pro rata share of TMDL credits that accrue from the expenditure of such additional funds.

6. **INTERLOCAL AGREEMENT.** This Interlocal Agreement is an interlocal agreement, as contemplated by Chapter 163, Part III, Florida Statutes, and other applicable law. This Interlocal Agreement adopts, incorporates and ratifies the provisions of the Ordinance. It is governed by the laws of Florida.

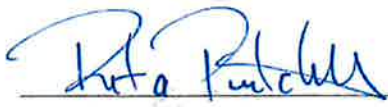

7. **MODIFICATION.** This Interlocal Agreement may be amended, supplemented or cancelled only by a written instrument duly executed by the parties hereto.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year indicated next to the signature of their respective authorized representatives and this Interlocal Agreement shall take effect upon the date of execution by the last party to the Interlocal Agreement.

**Brevard County, Florida**

Signed:   
Typed Name: Rita Pritchett  
Title: Chair  
Date: January 23, 2018  
Attest:   
Scott Ellis, Clerk

Reviewed for legal form and content by:



Christine Valliere, Assistant County Attorney

Cape Canaveral, Florida  
(Municipality)

Signed:

*David L. Greene* (for)

Typed Name: David L. Greene

Title: City Manager

Date: January 31, 2018

Attest:

*Mia Goforth*

Typed Name: Mia Goforth

Title: City Clerk

Date: January 31, 2018



Cocoa, Florida  
(Municipality)

Signed:

Typed Name: Henry U. Parrish, III

Title: Mayor

Date: 5/22/2018

Attest:

Typed Name: Carie E. Shealy

Title: City Clerk

Date: 5/22/2018



Cocoa Beach, Florida  
(Municipality)

Signed:

Typed Name:

Title:

Date:

B. Malik  
BEN MALIK  
MAYOR  
January 18, 2018

Attest:

Typed Name:

Title:

Date:

J. Kalagichy  
Joreana Kalagichy  
City clerk  
January 18, 2018

Grant-Valkaria, Florida  
(Municipality)

Signed: \_\_\_\_\_

Typed Name: Del Yonts

Title: Mayor

Date: May 9, 2018

Attest: \_\_\_\_\_

Typed Name: Rebekah Raddon

Title: Town Clerk

Date: May 9, 2018



**Town of Indialantic, Florida**  
(Municipality)

Signed:

Typed Name: Christopher W. Chinault

Title: Town Manager

Date: 1-10-18

Attest:

Typed Name: Joan Clark

Title: Town Clerk

Date: 1/10/2018



Indian Harbour Beach, Florida  
(Municipality)

Signed:



Typed Name: David A. Panicola

Title: Mayor

Date: 01-09-2018

Attest:



Typed Name: Sue Frank

Title: City Clerk

Date: 01-09-2018



Mabbar, Florida  
(Municipality)

Signed:

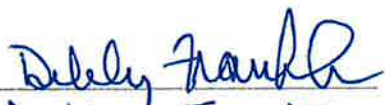


Typed Name: Matthew Stinnett

Title: Town Administrator

Date: 11/19/18

Attest:



Typed Name: Debby Franklin

Title: Town Clerk/Treasurer

Date: 11/19/18



City of Melbourne Florida  
(Municipality)

Signed: \_\_\_\_\_

*Michael G. Mares*

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

*City Manager*

Date: \_\_\_\_\_

*1-17-18*

Attest: \_\_\_\_\_

*Cathleen A. Wysor*

Typed Name: \_\_\_\_\_

*Cathleen A. Wysor*

Title: \_\_\_\_\_

*City Clerk*

Date: \_\_\_\_\_

*JAN 17 2018*



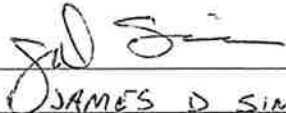
Melbourne Beach, Florida  
(Municipality)

Signed: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_


  
JAMES D. SIMMONS  
MAYOR  
1/17/2019

Attest: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
Nancy Wilson  
Town Clerk  
1/17/19

Melbourne Village, Florida  
(Municipality)

Signed:

*Heidi A. Salmon*

Typed Name:

Heidi Salmon

Title:

Mayor

Date:

1/29/2019

Attest:

Typed Name:

Title:

Date:

**City of Palm Bay, Florida**

Signed:

Typed Name: Gregg Lynk

Title: Palm Bay City Manager

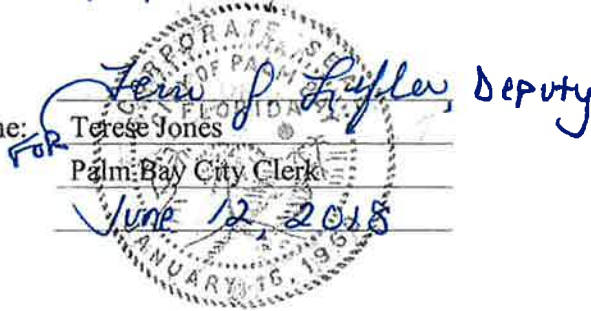
Date: 5/18/18

Attest:

Typed Name: Terese Jones

Title: Palm Bay City Clerk

Date: June 12, 2018



Board of  
Palm Shores, Florida  
(Municipality)

Signed: Mayor Carol M. McCormack  
Typed Name: ~~AT~~ Carol M. McCormack  
Title: Mayor  
Date: 11-27-2018

Attest: C. Lenti  
Typed Name: Christine Lenti  
Title: Administrative Assistant  
Date: 11/27/2018

Rockledge, Florida  
(Municipality)

Signed:

Typed Name: Thomas J. Price

Title: Chairman, Rockledge City Council

Date: 5/16/18

Attest:

Typed Name: Elsa C. Nicholas

Title: Public Relations Officer & City Clerk

Date: 5/16/18



Satellite Beach, Florida  
(Municipality)

Signed:

Typed Name: Courtney Barker

Title: City Manager

Date: 2-2-18

Attest:

Typed Name: Julie Finch

Title: Executive Assistant

Date: 2-2-18

**Titusville, Florida**  
(Municipality)

Signed: \_\_\_\_\_

Typed Name: Walt Johnson

Title: Mayor

Date: 1-11-18



Attest: \_\_\_\_\_

Typed Name: Wanda Wells

Title: City Clerk

Date: 1-11-18



**West Melbourne, Florida**

Signed: Hal Rose  
Typed Name: Hal J. Rose  
Title: Mayor  
Date: 11/21/2017

Attest: Cynthia S. Hanscom  
Typed Name: Cynthia S. Hanscom  
Title: City Clerk  
Date: 11/21/2017



Reviewed for legal form and content by:

Morris Richardson

Morris Richardson, City Attorney