

Meeting Date
January 23, 2018



AGENDA	
Section	Consent
Item No.	II.A.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Replacement Interlocal Agreement (ILA) for Distribution of Pollution-Reduction Credits received for projects funded by the Save Our Indian River Lagoon Surtax
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested the board approve the replacement ILA providing for the equitable distribution of pollution-reduction regulatory credits for projects funded with the proceeds of the Save Our Indian River Lagoon local infrastructure surtax.

Summary Explanation & Background:

In 2016 the majority of municipalities approved an ILA with Brevard County regarding the distribution of revenues derived from a half-cent sales tax to be levied for projects and programs for the restoration of the Indian River Lagoon. The Surtax commenced on January 1, 2017, and will continue for a period of ten years until December 31, 2027.

The ILA executed in 2016 did not address the issue of pollution-reduction credits. Each local government is required by the state to reduce a set amount of pollution to the Indian River Lagoon in order to comply with state and federal Total Maximum Daily Load (TMDL) standards set for the lagoon. Many projects funded by the Surtax will be eligible for TMDL credits, which can be applied to satisfy this pollution-reduction obligation. The management teams for Brevard County and the various municipalities have reached agreement regarding the equitable distribution of TMDL pollution-reduction credits for projects funded via the proceeds of the Surtax.

Resulting credits will be distributed fairly between jurisdictions based on the watershed within which the project is located (Banana River Lagoon, North IRL, and Central IRL), and according to a population-based distribution formula. The formula uses the population estimates of local governmental units as of April 1, 2016, as published by the University of Florida Bureau of Economic and Business Research, until such time as the census block data for the 2020 United States Census becomes available.

The distribution formula only applies to the distribution of TMDL credits resulting from expenditure of Surtax proceeds. When a project is funded by both Surtax proceeds and contributions made by other governmental entities, such as a city, TMDL credits will be distributed pro rata in the same ratio as the entity's contribution to the project cost, or as otherwise agreed by multiple contributing entities. Likewise, if a project is funded by both Surtax proceeds and and/or grant monies, cost share contracts, or legislative appropriations, the entity which made the contribution or applied for and received the additional funds will receive a pro rata share of TMDL credits that accrue from the expenditure of such funds.

The attached agreement provides for fair distribution of the TMDL credits among the County and various municipalities.

Fiscal Impact: FY 17-18 – No Impact
FY 18-19 – No Impact

Name: Virginia Barker - Natural Resources Management Department
Phone: 633-2016

Clerk to the Board Instructions: Execute 2 originals and return 1 to NRM. NRM will collect signature sheets from all the cities, record the fully executed contract at the Courthouse and distribute copies of the recorded document to all parties

Exhibits Attached: **Attachment A – Replacement Interlocal Agreement and Contract Review Form**

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Frank Abbate 	Assistant County Manager John Denninghoff 	Department Director / Extension Virginia Barker/ (321) 633-2016
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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Various partners participating SOIRL Project Plan	
2. Fund/Account #: 1260/Various	3. Department Name: Natural Resources
4. Contract Description: Save Our Indian River Lagoon Local Infrastructure Surtax Interlocal Agreement	
5. Contract Monitor: Virginia Barker/Brandon Smith	7. Contract Type: INTERGOVT/LOCAL
6. Dept/Office Director: Virginia Barker	

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>		_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brandon Smith <small>Digital signed by Brandon Smith Date: 2018.01.05 12:47:19 -0500</small>	01/05/2018
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digital signed by Matt Lairsey Date: 2018.01.05 13:21:30 -0500</small>	01/05/2018
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Valliere, Christine <small>Digital signed by Christine Valliere Date: 2018.01.05 13:38:02 -0500</small>	01/05/2018

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<u>CM DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

January 24, 2018

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item II.A.1., Replacement Interlocal Agreement (ILA), for Distribution of Pollution-Reduction Credits Received for Projects Funded by the Save Our Indian River Lagoon Surtax

The Board of County Commissioners, in regular session on January 23, 2018, executed the replacement ILA providing for equitable distribution of pollution-reduction regulatory credits for projects funded with the proceeds of the Save Our Indian River Lagoon local infrastructure surtax. Enclosed is an executed copy of the Replacement Interlocal Agreement.

Upon execution by all parties, please send a fully-executed copy of the Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encl. (1)

cc: Contracts Administration
Budget
Finance

**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 23 day of JANUARY, 2017, by and between The Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida ("County") and _____, a Florida municipal corporation 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

Cocoa Beach, Florida
(Municipality)

Signed:

Typed Name:

Title:

Date:


BEN MALIK
MAYOR
January 18, 2018

Attest:

Typed Name:

Title:

Date:

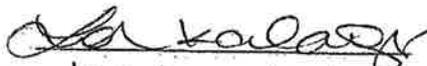

Joredana Kalaghchy
City Clerk
January 18, 2018

EXHIBIT A – DISTRIBUTION OF TMDL CREDITS

TABLE 1: TOTAL POPULATION

City/Town	Population (2016)	Percent	Sub-Lagoon
Brevard County (Unincorporated)	212,740	37.4%	BRL, NIRL, CIRL
Cape Canaveral	10,171	1.8%	BRL
Cocoa	18,833	3.3%	NIRL
Cocoa Beach	11,276	2.0%	BRL
Grant-Valkaria	4,073	0.7%	CIRL
Indialantic	2,811	0.5%	NIRL, CIRL
Indian Harbour Beach	8,446	1.5%	BRL
Malabar	2,817	0.5%	CIRL
Melbourne	80,419	14.1%	NIRL, CIRL
Melbourne Beach	3,076	0.5%	CIRL
Melbourne Village	666	0.1%	CIRL
Palm Bay	109,162	19.2%	CIRL
Palm Shores	979	0.2%	NIRL
Rockledge	26,303	4.6%	NIRL
Satellite Beach	10,485	1.8%	BRL
Titusville	46,022	8.1%	NIRL
West Melbourne	20,640	3.6%	CIRL

TABLE 2: BANANA RIVER LAGOON BMAP WATERSHED

City/Town	Population (2016)	Percent
Brevard County (Unincorporated)	97,860	70.8%
Cape Canaveral	10,171	7.4%
Cocoa Beach	11,276	8.2%
Indian Harbour Beach	8,446	6.1%
Satellite Beach	10,485	7.6%

TABLE 3: NORTH IRL BMAP WATERSHED

City/Town	Population (2016)	Percent
Brevard County (Unincorporated)	44,675	23.8%
Cocoa	18,833	10.0%
Indialantic	1,181	0.6%
Melbourne	49,860	26.5%
Palm Shores	979	0.5%
Rockledge	26,303	14.0%
Titusville	46,022	24.5%

TABLE 4: CENTRAL IRL WATERSHED

City/Town	Population (2016)	Percent
Brevard County (Unincorporated)	70,204	28.9%
Grant-Valkaria	4,073	1.7%
Indialantic	1,630	0.7%
Malabar	2,817	1.2%
Melbourne	30,559	12.6%
Melbourne Beach	3,076	1.3%
Melbourne Village	666	0.3%
Palm Bay	109,162	45.0%
West Melbourne	20,640	8.5%