

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Agenda Item #:

3A-2

Meeting Date: July 12, 2016

☒ Consent ☐ Regular
☐ Ordinance ☐ Public Hearing

Department: Administration

Submitted By: Financial Management and Budget

I. Executive Brief

Motion and Title: Staff recommends motion to receive and file: An interlocal agreement among Palm Beach County, the School Board of Palm Beach County, and the Signatory Municipalities (municipalities representing a majority of incorporated population binding all) pertaining to the shared distribution and use of the one cent local government infrastructure surtax.

Summary: An interlocal agreement establishing a distribution formula that would be inclusive of all proposed partners was approved by the County and the School Board at a joint meeting on May 10, 2016. Since that meeting, twenty-one (21) municipalities representing more than a majority, sixty-four percent (64%), of the County's incorporated population have approved the interlocal agreement. The municipalities are: Atlantis, Belle Glade, Boynton Beach, Briny Breezes, Delray Beach, Greenacres, Haverhill, Highland Beach, Jupiter Inlet Colony, Lake Clarke Shores, Lake Park, Lake Worth, Lantana, Loxahatchee Groves, Pahokee, Palm Springs, Royal Palm, South Bay, South Palm Beach, Wellington and West Palm Beach.

The local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The surtax applies to the first \$5,000 of any single taxable tangible personal property item. Items such as groceries, baby food, baby formula, and medicines are exempt from sales tax. Levying this surtax will partially shift the funding responsibility to visitors; about 25% of sales tax in Palm Beach County is paid by visitors, as opposed to funding infrastructure backlog through property taxes.

Florida's Department of Revenue (DOR) will distribute the surtax directly to the School District, each Municipality, and the County. Countywide (PFK)

Attachments:

1. Interlocal Agreement

Recommended by:


Department Director

6/28/16
Date

Approved By:


County Administrator

7/7/16
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No X _____ (Various Budgets)

Budget Account No.: Fund _____ Department _____ Unit _____

Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:


_____ OFMB

Contract Dev. and Control

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03

ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

Background and Policy Issues: On July 28, 2015 and November 24, 2015, the Board discussed financing infrastructure needs and directed staff to review possible funding options and hire consultants to review projects and spending. On February 9, 2016, the Board of County Commissioners (BCC) directed staff to work with the Municipalities, School District and Cultural Council, representing cultural organizations, to develop a joint plan specific to an infrastructure surtax. Further, the Board directed staff to bring back project lists from the partners. On February 24, 2016, the League of Cities Executive Board voted to not oppose a slightly different proposal which reflected 46.5% School District, 28.5% County, 18.5% Municipalities and 6.5% Economic Development for Cultural Facilities. After further analysis and review, staff refined the proposal and the School District approved the proposal described in the motion with a deadline for approval by the BCC no later than April 15, 2016. On March 22, 2016, the Board approved an infrastructure surtax plan for one cent, maximum 10 years, creation of an oversight committee to audit spending for compliance with approved projects, and the following allocations: 48% to the School District, 27.5% to the County, 18.5% to the Municipalities, 4.5% for Economic Development through Cultural Facilities, and 1.5% for Economic Development Incentives. On May 3, 2016, the Board approved on first reading an infrastructure surtax plan for one cent, maximum 10 years beginning January 1, 2017, creation of an oversight committee to audit spending for compliance with approved projects, and the following allocations: 50% to the School District, 30% to the County, and 20% to the Municipalities. The proceeds of such tax would finance the renewal and replacement of existing capital investments including roadway surfaces, bridges, drainage improvements, canals, park amenities, and government buildings, all of which were deferred during the recent recession and remain outstanding, and projects to maintain levels of service. An independent oversight committee would be established to insure that spending is in line with the statutory requirements. On May 17, 2016, the Board approved on second reading an infrastructure surtax plan as per the ordinance on May 3rd with the addition of a sunset provision that the surtax will end if \$2.7 billion is collected before September 1st of any year. This Ordinance for one-cent infrastructure surtax includes ballot language for a referendum scheduled for November 8, 2016. In addition to creating an oversight committee(s), a project manager will be hired or assigned to coordinate and monitor the program.

R 2016-0588

INTERLOCAL AGREEMENT AMONG PALM BEACH COUNTY, THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, AND THE SIGNATORY MUNICIPALITIES PERTAINING TO THE SHARED DISTRIBUTION AND USE OF THE ONE CENT LOCAL GOVERNMENT INFRASTRUCTURE SURTAX

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this ____ day of MAY 10 2016, 2016, by and between **PALM BEACH COUNTY** ("County"), a political subdivision of the State of Florida, **THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**, a corporate body politic of the state of Florida ("School Board"), and the signatory municipalities (collectively referred to hereinafter as "MUNICIPALITIES"):

WITNESSETH:

WHEREAS, pursuant to section 212.055(2), Florida Statutes (2015), the County intends to authorize by Ordinance the imposition of a one percent (1.0%) local government infrastructure sales surtax ("Surtax") upon taxable transactions occurring in Palm Beach County and has provided for distribution of the proceeds from the Surtax subject to the outcome of a countywide referendum on November 8, 2016; and

WHEREAS, the Municipalities are located within Palm Beach County, are eligible to receive a portion of the Surtax, represent a majority of the County's municipal population, and desire to jointly establish with the County the distribution formula for the proceeds of the Surtax in accordance with section 212.055(2)(c)(1), Florida Statutes (2015); and

WHEREAS, section 212.055(2)(c)(1), Florida Statutes (2015), provides that this Agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; and

WHEREAS, the parties to this Agreement desire to work together in order to promote the safe, efficient, and uninterrupted provision of numerous essential public services provided by the County, the Municipalities, and the School Board, including but not limited to providing improvements to district-owned school buildings, equipment, technology and security; purchasing school buses; repairing, constructing and equipping roads, bridges, sidewalks, streetlights, signalization, parks, recreational and governmental facilities, drainage, and wastewater facilities; and purchasing public safety vehicles and equipment; and

WHEREAS, the parties to this Agreement shall each be responsible for the adoption of project lists that will be funded from the Surtax Proceeds, subject to future revisions by the governing body of each applicable entity.

NOW THEREFORE, in consideration of the promises, covenants, and commitments contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged set forth herein, the parties agree as follows:

SECTION 1. RECITALS.

The foregoing recitals are true and correct and are hereby incorporated into and become a part of this Agreement.

SECTION 2. TERM.

This Agreement shall become effective when approved by the governing bodies of the County, the requisite number of Municipalities, and the School Board pursuant to section 212.055(2)(c)(1), Florida Statutes (2015). This Agreement shall remain in effect for the life of the Surtax imposed pursuant to the County Ordinance imposing the Surtax (the “Ordinance”) and until all Surtax Proceeds, as defined in Section 3 below, are expended by the respective parties.

SECTION 3. DISTRIBUTION PERCENTAGES.

(a) The Surtax Proceeds, defined as the collected Surtax less the amounts retained by the Florida Department of Revenue for administrative expenses pursuant to section 212.055(2), Florida Statutes (2015), derived from the Surtax levied and imposed by the County shall be distributed by the Department of Revenue directly to the parties to this Agreement as follows:

Recipient	Share of Total Proceeds
Palm Beach County	30.0%
School Board of Palm Beach County, Florida	50.0%
Municipalities within Palm Beach County	20.0% (to be divided proportionately among them based on population in the manner as set forth in Section 218.62(3), Florida Statutes; provided that the County's share received shall be as described herein and not pursuant to Section 218.62, Florida Statutes).

(b) Distribution of the Surtax Proceeds hereunder shall be made monthly by the Department of Revenue from the Discretionary Surtax Clearing Trust Fund directly to the County, the Municipalities, and the School Board as to their respective shares of Surtax Proceeds during the term of this Agreement commencing on or about January 2017 and each month thereafter during the term of this Agreement.

SECTION 4. USE OF SURTAX PROCEEDS.

The parties to this Agreement each certify that all Surtax Proceeds shall be expended only as permitted by section 212.055(2), Florida Statutes and the ballot language of the November 8, 2016 referendum. The County, the Municipalities, and the School Board shall each

be separately responsible for the adoption of project lists that will be funded from the Surtax Proceeds, subject to future revisions by the governing body of each applicable entity. Any future revisions of the resolution(s) of the individual parties shall not require an amendment to this Agreement or the joinder and consent of the other parties.

SECTION 5. CREATION OF CITIZEN OVERSIGHT COMMITTEES.

(a) The County, the Municipalities, and the School Board shall each separately provide for the creation of citizen oversight committees ("Committee" or collectively "Committees") to provide for citizen review of their respective expenditure of Surtax Proceeds, as soon as possible after the Surtax becomes effective, but not later than the date on which Surtax funds are first expended. A Municipality may either participate in an oversight committee created by the Palm Beach League of Cities or create its own committee.

(b) The Committees shall serve as advisory and reporting bodies to the creating entities. Each creating entity shall establish specific duties and membership requirements governing Committee operations and participation.

(c) The Committees shall meet monthly, or as otherwise needed to fulfill their duties and responsibilities. Each Committee shall annually provide a report to the governing board of the entity which created it for acceptance.

(d) Committee members shall receive no compensation for the performance of their duties.

(e) The Committees, their members, and all their proceedings shall be governed by and comply with the provisions of the Florida Sunshine Law, Chapter 286, Florida Statutes, the Florida Public Records Law, Chapter 119, Florida Statutes, and the Florida Ethics Code, Chapter 112, Florida Statutes, and all other applicable local or state statutes, ordinances, or rules.

SECTION 6. MUTUAL COOPERATION.

Each party agrees to work cooperatively and in good faith, individually and collectively, with the other parties to this Agreement on matters that are included and beyond the scope of this Agreement.

SECTION 7. MISCELLANEOUS.

(a) This Agreement is the entire agreement between the parties and all understandings and agreements are incorporated in this Agreement. This Agreement supersedes any prior agreements between the parties relating to Surtax.

(b) Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto.

(c) The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(d) Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

(e) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

(f) This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida without regard to its conflict of laws provisions. The parties agree that any controversies or legal disputes arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida.

(g) A copy of this Interlocal Agreement and all subsequent amendments hereto shall be filed with the Clerk of the Circuit Court of Palm Beach County, Florida, upon its execution by all parties hereto.

SECTION 8. TERMINATION.

This Interlocal Agreement shall automatically terminate and be null and void in the event that any one of the following events occurs. Termination of this Interlocal Agreement pursuant to this Section shall result in the ballot question referenced herein not appearing on the November 8, 2016 General Election Ballot.

(a) The Board of County Commissioners does not enact the Ordinance as presented and revised on first reading on May 3, 2016 and amended to include an early termination provision, on or before June 7, 2016, that provides as follows: alternatively, this Ordinance shall “sunset” in the event that the total aggregate distributions of Surtax proceeds equal or exceed the

amount of \$2,700,000,000 on or before September 1 of any year during the term of this Ordinance, in which event the Board shall take all necessary action to repeal this Ordinance and notify the Florida Department of Revenue prior to the applicable deadline so that the Surtax will not continue for the following calendar year.; or

(b) Municipalities representing a majority of the County's municipal population do not approve this Interlocal Agreement on or before June 10, 2016; or

(c) The Board of County Commissioners or any municipality required to achieve a majority of the County's municipality population approves an amendment to this Interlocal Agreement or rescinds its approval thereof prior to the date of the final approval of the Ordinance by the Board of County Commissioners on or before June 10, 2016; or

(d) The Board of County Commissioners, prior to the date of the referendum, amends the Ordinance in any substantive way from the version enacted as described in (a) above.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have caused this Local Government Infrastructure Surtax Interlocal Agreement to be duly executed in counterparts by their respective and duly authorized officers as of the date set forth above.

R201640588

MAY 10 2016

PALM BEACH COUNTY, FLORIDA

By: Mary Lou Berger
Mary Lou Berger
Mayor

(SEAL)

ATTEST:

Sharon R. Bock, Clerk & Comptroller
Circuit Court

By:

Nancy Russell
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:

Paul F. [Signature]
County Attorney

**THE SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA**

By: _____
Chuck Shaw, Chairman

By: _____
Robert M. Avossa, Ed.D., Superintendent

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
School Board Attorney

THE SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

By: _____
Chuck Shaw, Chairman

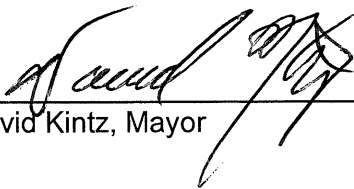
By: _____
Robert M. Avossa, Ed.D., Superintendent

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
School Board Attorney

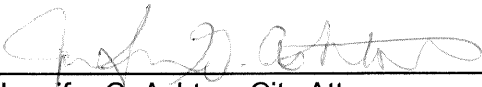
CITY OF ATLANTIS, FLORIDA

By:  _____
David Kintz, Mayor



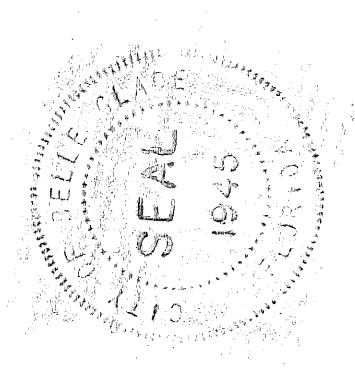
By:  _____
Kristen Puhalainen, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:  _____
Jennifer G. Ashton, City Attorney

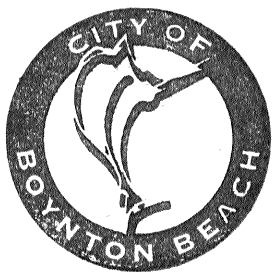
CITY OF BELLE GLADE, FLORIDA

By: Steve B. Wilson
Name: Steve B. Wilson
Title: Mayor



CITY OF BOYNTON BEACH, FLORIDA

By: Steven B. Grant
Name: Steven B. Grant
Title: Mayor



(SEAL)


ATTEST:

By: Judith A. Pyle
Judith A. Pyle, CMC, Interim City Clerk


APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: James A. Cherof FOR
James A. Cherof, City Attorney

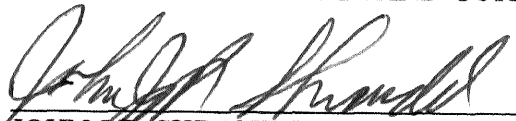
TOWN OF BRINY BREEZES, FLORIDA

By: 
Susan Thaler, President, Town Council

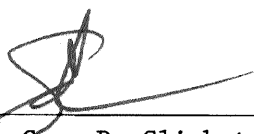
ATTEST:


ROBERT JUROVATY, Town Clerk Pro Tem

APPROVED AS TO FORM AND CORRECTNESS:


JOHN I.R. SKRANDEL
Attorney For Town of Briny Breezes

CITY OF Delray Beach, FLORIDA


By: 
Name: Cary D. Glickstein
Title: Mayor


(SEAL)

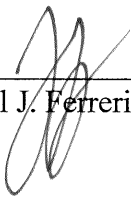
ATTEST:

By: 
Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
City Attorney

CITY OF GREENACRES, FLORIDA

By: 
Samuel J. Ferreri
Mayor

Attest:



Denise McGrew
City Clerk

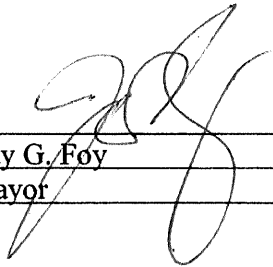


Approved as to Form
and Legal Sufficiency:




James D. Stokes
City Attorney

TOWN OF HAVERHILL, FLORIDA

By: 
Name: Jay G. Foy
Title: Mayor

ATTEST:


Janice C. Rutan, Town Administrator

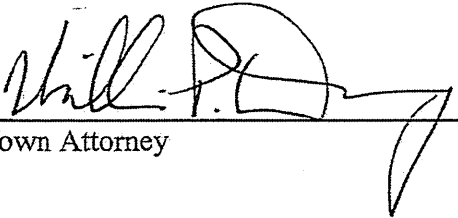
CITY OF Highland Beach, FLORIDA
HIGHLAND BEACH

By: Bernard Featherman
Name: BERNARD FEATHERMAN
Title: MAYOR

TOWN OF JUPITER INLET COLONY,
FLORIDA

By: 
Name: Daniel J. Comerford III
Title: Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
Town Attorney

TOWN OF LAKE CLARKE SHORES,
FLORIDA

By:


Robert M. W. Shalhoub, Mayor

(SEAL)

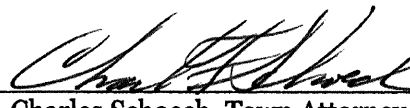
ATTEST:

By:


Mary Pinkerman, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By:

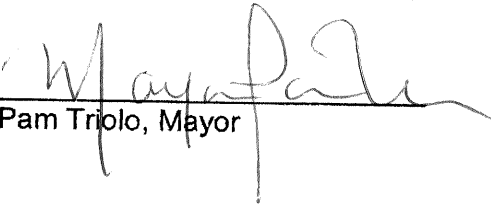

Charles Schoech, Town Attorney

Town Lake Park, FLORIDA
CITY OF


By: James DuBois
Name: James DuBois
Title: Mayor

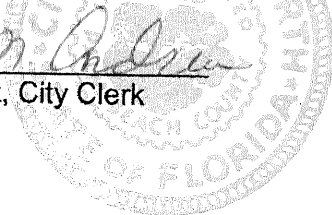
Dated the 7th day of June, 2016.

LAKE WORTH CITY COMMISSION

By: 
Pam Triolo, Mayor

ATTEST:

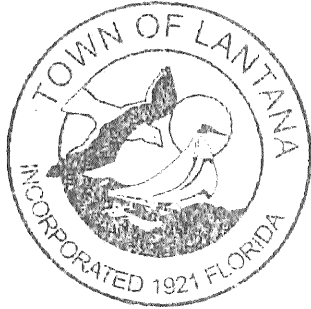
for 
Pamela J. Lopez, City Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  FOR

Office of the City Attorney



TOWN OF LANTANA, FLORIDA

By: David J. Stewart
David J. Stewart
Mayor

(SEAL)

ATTEST:

By: Nicole A. Dritz
Nicole A. Dritz, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: R. Max Lohman
R. Max Lohman, Town Attorney

TOWN OF LOXAHATCHEE GROVES,
FLORIDA

By: David Browning
Name: David Browning
Title: Mayor

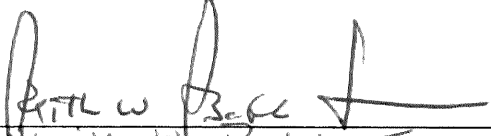
ATTEST:


By: Virginia M Walton (SEAL)
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
Town Attorney

CITY OF Panokee, FLORIDA

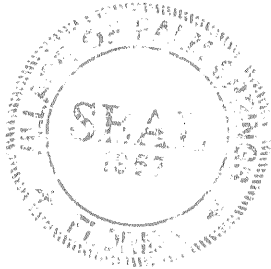
By: 
Name: Keith W. Babbs, Sr.
Title: Mayor

Approved



VILLAGE OF PALM SPRINGS, FLORIDA


By: [Signature]
Name: Ben Smith
Title: Mayor

Village Attorney [Signature]
Attest: [Signature]
Susan Caljean, Village Clerk



VILLAGE OF ROYAL PALM BEACH,
FLORIDA

By: 
Name: Fred Pinto
Title: Mayor

Attest: 
Diane DiSanto, Village Clerk

May 24, 2016

TOWN OF SOUTH PALM BEACH, FLORIDA

Bernice Fischer
Bernice Fischer, Mayor

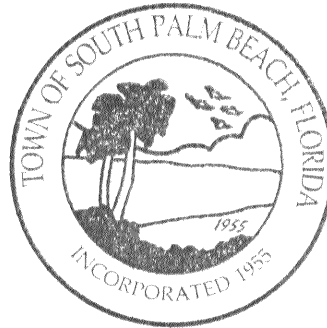
Attest:

Maylee De Jesús
Maylee De Jesús, CMC, Town Clerk

Approved as to Legal Sufficiency:

Bradley W. Biggs
Bradley W. Biggs, Town Attorney

SEAL




VILLAGE OF WELLINGTON, FLORIDA


By: 
Name: Anne Gerwig
Title: Mayor

(SEAL)

ATTEST:

By: 
Awilda Rodriguez, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
Laurie Cohen, Village Attorney

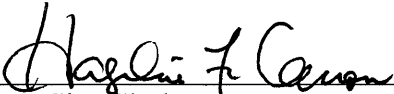
Signature Page for:

INTERLOCAL AGREEMENT AMONG PALM BEACH COUNTY, THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, AND THE SIGNATORY MUNICIPALITIES PERTAINING TO THE SHARED DISTRIBUTION AND USE OF THE ONE CENT LOCAL GOVERNMENT INFRASTRUCTURE SURTAX


WPB Contract No. 17464

ATTEST:

CITY OF WEST PALM BEACH


City Clerk

By: 
Geraldine Muoio, Mayor

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: 

Date: 5/24, 2016

WPB No. 17464