BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 21, 2005 Division: County Attorney

Bulk Item: Yes ___ No X Department: County Attorney

Staff Contact Person(s): Dave Koppel or Suzanne Hutton

AGENDA ITEM WORDING:
Approval of an interlocal agreement (ILA) between the Board of County Commissioners and the municipalities of Islamorada, Key Colony Beach, Layton & Marathon, for the sharing of gas tax.

ITEM BACKGROUND:
The County has transferred responsibility for road maintenance to the various municipalities. The municipalities have requested a sharing of the gas tax, and it was deemed equitable to base the sharing on road miles and bridges that need to be maintained.

PREVIOUS RELEVANT BOCC ACTION:
Discussion and direction to staff to bring an ILA forward to provide a distribution of monies.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:
Approval.

TOTAL COST: NA **BUDGETED:** Yes ___ No ___

COST TO COUNTY: NA **SOURCE OF FUNDS:**_____

REVENUE PRODUCING: Yes ___ No ___ **AMOUNT PER MONTH**____**Year**____

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL: John R. Collins 08/23/05
JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required_____

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 2/05

GAS TAX SHARING INTERLOCAL AGREEMENT

This Agreement is made and entered into by MONROE COUNTY (COUNTY), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, and Islamorada, The Village of Islands (ISLAMORADA), a municipal corporation of the State of Florida and whose address is 87000 Overseas Highway, Islamorada, Florida 33036, the City of Key Colony Beach (KEY COLONY BEACH), a municipal corporation of the State of Florida and whose address is PO Box 510141, 600 West Ocean Drive, Key Colony Beach, Florida 33051, the City of Layton (LAYTON), a municipal corporation of the State of Florida and whose address is PO Box 778, Long Key, Florida 33001, the City of Marathon (MARATHON), a municipal corporation of the State of Florida and whose address is 10045-55 Overseas Highway, Marathon, Florida 33050.

WHEREAS, the Constitution of the State of Florida Article XII, Section (9)(c), and Section 206.41(1)(a), Florida Statutes, authorize the imposition of a motor fuel excise tax which is collected by the State Board of Administration and distributed to each county as the "Surplus Fuel Tax;" and

WHEREAS, the "Surplus Fuel Tax" may be used only for acquisition, construction, and maintenance of roads, pursuant to Section 206.47(7), F.S.; and

WHEREAS, historically, constitutional fuel tax funds received by the County were, and currently are, expended on public roads in the county road system, which are exclusive of city or municipal public roads; and

WHEREAS, section 336.023(2), F.S. allows the use of the "Constitutional Gas Tax" for "any road in the county;" and

WHEREAS, Attorney General Opinion 2003-03 advised that such roads may be in a city street system rather than in the county street system; and

WHEREAS, Monroe County Attorney Memorandum of Guidance #2005-1 concluded that it is permissible for the "Constitutional Gas Tax" to be apportioned to the municipalities, based on percentage of collection; and

WHEREAS, the municipalities in the County of Monroe have requested that proportionate shares of the County's receipt of Surplus Fuel Tax, hereinafter designated the "Constitutional Gas Tax," be distributed to them for purposes of maintaining their own roads; and

WHEREAS, the parties are authorized by Section 163.01(4), Florida Statutes, to enter into an interlocal agreement to carry out their independent powers; and

WHEREAS, in a memorandum dated January 5, 2005, County Engineer David S. Koppel reported that the Mayor of Monroe County, the Mayor of Islamorada, Village of Islands, the Mayor of the City of Marathon, the Mayor of the City of Layton, and the Mayor of the City of Key Colony Beach have concluded to divide amongst the various

jurisdictions the sum of TWO MILLION THREE HUNDRED THOUSAND DOLLARS ($2,300,000.00) based upon public road mileage within each jurisdiction, and to divide an additional TWO HUNDRED THOUSAND DOLLARS ($200,000.00) amongst the various jurisdictions based upon the number of public bridges in each jurisdiction; **now therefore,**

IN CONSIDERATION OF the mutual promises and conditions contained herein, the PARTIES agree as follows:

1. **TERM.**

Subject to and upon the terms and conditions set forth herein, this Agreement shall be effective retroactive to October 1, 2004 and continue in force until the such time as in any subsequent fiscal year either 1) the revenue is no longer distributed by the State Board of Administration, 2) the funding is no longer budgeted by the Board of County Commissioners or 3) by mutual consent of the parties.

2. **DEFINITION.**

Constitutional Gas Tax shall mean those revenues received by COUNTY from the State Board of Administration as the COUNTY share of the surplus fuel tax authorized by Section 206.41(1)(a), Florida Statutes, as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended.

3. **PERMISSIBLE USES.**

The constitutional gas tax shall only be used for road acquisitions, road construction (including installation of traffic signals, sidewalks, bicycle paths, and landscaping), routine and periodic road maintenance, and as certain grant matching funds, pursuant to the provisions of Sections 206.47(7), 334.03, 336.023, and 336.024, Florida Statutes, or an subsequent amendments thereto.

4. **ROAD MILES AND BRIDGES.**

The parties agree that, for purposes of this Agreement, the public road miles and public bridge(s) within the limits and under the jurisdiction of each City, and the total, respectively, of all public Road miles and Bridges in the County, are as follows:

JURISDICTION	PUBLIC ROAD MILES	PUBLIC BRIDGES
ISLAMORADA	39	0
KEY COLONY BEACH	8	1
KEY WEST	80	0
LAYTON	3	0
MARATHON	58	9
Unincorporated COUNTY	389	21
TOTAL	577	31

5. **INITIAL DISTRIBUTION BASED UPON PUBLIC ROAD MILES**. The COUNTY agrees to distribute to the Cities their respective proportionate shares of the constitutional fuel tax in the total amount of TWO MILLION THREE HUNDRED THOUSAND DOLLARS ($2,300,000.00), apportioned in the following sums:

Unincorporated COUNTY	$ 1,869,440
ISLAMORADA	$ 155,480
KEY COLONY BEACH	$ 31,970
KEY WEST	$ 0
LAYTON	$ 11,960
MARATHON	$ 231,150
Total	$ 2,300,000

6. **INITIAL DISTRIBUTION BASED UPON PUBLIC BRIDGES**. The County agrees to distribute to the Cities their proportionate shares of the constitutional fuel tax amount of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), apportioned in the following sums:

COUNTY	$ 135,480
ISLAMORADA	$ 0
KEY COLONY BEACH	$ 6,460
KEY WEST	$ 0
LAYTON	$ 0
MARATHON	$ 58,060
Total	$ 200,000

7. **PAYMENT OF DISTRIBUTION AMOUNTS.** During the fiscal year ending September 30, 2005, the first year under this agreement, the COUNTY shall pay to the municipalities the maximum of the sums designated in Sections 5 and 6, above, pursuant to the procedures set forth below, and contingent upon annual appropriation:

A. The municipalities shall utilize those funds described in Sections 5 and 6 only for uses permitted under Section 3 above, as more particularly permitted according to court interpretations of the laws governing the uses of the tax.

B. Commencing on the effective date of this agreement, the County shall pay to the municipalities 100% of the amounts of the funds designated above for Fiscal Year 2005.

C. Thereafter, for each subsequent fiscal year for which County budgets distribution of gas tax to the municipalities, County shall make distributions of actual collections on a quarterly basis pursuant to the percentages established in Section 9 below.

D. The municipalities must establish fiscal control and fund accounting procedures that comply with generally accepted government accounting principles in order to assure that the funds are spent for the purposes set forth in this agreement. Each municipality shall include in its contract with its independent auditor who performs the

annual audit a requirement to provide the County Clerk with a letter of compliance, stating that the auditor has examined the transactions involving expenditure of the gas tax proceeds and that the transactions are in compliance with applicable laws. Any funds transferred by the COUNTY to a municipality under this agreement that are determined by the Clerk, an auditor employed by the COUNTY or employed by the State to have been spent on a purpose not contemplated by this agreement must be paid back to the COUNTY with interest calculated pursuant to Sec. 55.03(1), FS, from the date the auditor determines the funds were expended for a purpose not authorized by this agreement. Failure to provide the annual letter of compliance shall be deemed a breach for which this agreement may be terminated as to the breaching party pursuant to Section 17.

8. NO GUARANTEED DISTRIBUTION AMOUNT. The Parties agree that the COUNTY does not agree, warrant, or guarantee a set minimum or maximum fixed amount of constitutional fuel tax dollars distributions for any subsequent fiscal years beyond fiscal year 2004-05. The amount to be received by the City in any subsequent year shall be solely dependent upon (a) the amount received from the State Board of Administration and (b) the public road mile percentage and number of bridges percentage calculated for the Cities in Section 9 of this Agreement.

9. PERCENTAGES BASED UPON PUBLIC ROAD MILES AND NUMBER OF PUBLIC BRIDGES. For distributions of constitutional gas tax proceeds for subsequent fiscal years, the Parties agree that the amounts to be distributed under this Agreement shall be equal to the following percentages of the amount received by the County from the SBA:

COUNTY	80.1968 %
ISLAMORADA	6.2192 %
KEY COLONY BEACH	1.5372 %
LAYTON	0.4784 %
MARATHON	11.5684 %
	100.00 %

10. **RECORDS – ACCESS AND AUDITS**. All Parties shall maintain adequate and complete records for a period of four years after each fiscal year allocation. Each Party, its officers, employees, agents and contractors shall have access to the Other Party's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the Parties shall occur at any reasonable time.

11. **RELATIONSHIP OF PARTIES**. The Parties are independent of each other and shall at no time be legally responsible for any negligence on the part of the Other Parties, their employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

12. **TAXES**. The Parties are not subject to taxes and assessments.

13. **INSURANCE**. The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation

insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this agreement.

Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this agreement are canceled, terminated or reduced in coverage, then the respective party must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the Other Party whenever acquired or amended.

14. **RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT**. The municipalities shall include in all agreements funded under this agreement the following terms:

A. Anti-discrimination. Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

B. Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Municipality(ies) has any interest, financially or otherwise, in contractor. For breach or violation of this warranty, the Municipality(ies) shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

C. Hold harmless/indemnification. Contractor acknowledges that this agreement is funded at least in part by the County and agrees to indemnify and hold harmless Monroe County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to the Municipality and the County of any suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with the Municipality and the County in the investigation arising as a result of any suit, action or claim related this agreement.

D. Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Municipality and Monroe

County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Municipality(ies) or the County for such injuries to persons or damage to property occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the Municipality and the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.

2. Commercial General Liability Insurance with minimum limits of $500,000 per occurrence for bodily injury, personal injury and property damage.

3. Comprehensive Auto Liability Insurance with minimum limits of $300,000 combined single limit per occurrence.

The Municipality and the County shall be named as additional insured. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the Municipality and the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

E. Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

F. Right to Audit. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of any municipality which is a party to this agreement, Monroe County, the State of Florida, or authorized agents and representatives of said government bodies.

15. **HOLD HARMLESS**. To the extent allowed by law, each Party is liable for and must fully defend, release, discharge, indemnify and hold harmless the other parties, the members of their governing boards, officers and employees, agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the operations under this agreement except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence or malfeasance of the respective Party. The purchase of the insurance required under this Agreement does not release or vitiate any Party's obligations under this paragraph. No Party waives any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

16. **NON-DISCRIMINATION**. The Parties, each for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration

hereof, does hereby covenant and agree that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of premises or in the contracting for improvements to the premises.

The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

17. **TERMINATION**. The COUNTY may terminate this agreement for cause after giving to the breaching party at least ninety days written notice of the breach, and allowing the allegedly breaching party a period of forty-five (45) days within which to cure said breach. Failure to cure the breach shall be noticed by the COUNTY in writing and provided to the breaching party at least twenty (20) days prior to the termination date. Application of the monies received pursuant to this agreement for any purpose other than those set forth in Section 3 shall be deemed a breach.

18. **ASSIGNMENT**. No Party may assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the governing boards of the other Parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of the all Parties. A municipal contract for roadwork to be performed, which does not divest the municipality of its jurisdiction over and ultimate responsibility for maintaining public roads shall not be considered a sub-contract or assignment prohibited by this provision.

19. **SUBORDINATION**. This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this agreement or adopted after that date.

20. **INCONSISTENCY**. If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the COUNTY's responsibility and liability.

21. **GOVERNING LAWS/VENUE**. This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

22. **ETHICS CLAUSE**. Each municipality warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this agreement without liability and may also, in its discretion, deduct from the funds due the municipality, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

23. **CONSTRUCTION**. This Agreement has been carefully reviewed by the Parties. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

24. **NOTICES**. Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

KEY COLONY BEACH:
Thomas D. Wright
City Attorney for Key Colony Beach
9711 Overseas Highway
Marathon, FL 33050
&
City Manager
PO Box 510141
Key Colony Beach, FL 33051

MARATHON:
City Manager
10045-55 Overseas Highway
Marathon, Florida 33050

ISLAMORADA:
Village Manager
87000 Overseas Highway
Islamorada, Florida

LAYTON:
Thomas D. Wright
City Attorney for Layton
9711 Overseas Highway
Marathon, FL 33050
&
City Manager
PO Box 778
Long Key, FL 33001

25. **FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding regarding the subject matter hereof. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 8/25/05

(SEAL)
ATTEST:

By: _____
Clerk

ISLAMORADA, VILLAGE OF ISLANDS

By: _____
Mayor

(SEAL)
ATTEST:
By: _____
Clerk

CITY OF KEY COLONY BEACH

By: _____
Mayor

(SEAL)
ATTEST:
By: _____
Clerk

CITY OF LAYTON

By: _____
Mayor

(SEAL)
ATTEST:
By: _____
Clerk

CITY OF MARATHON

By: _____
Mayor