

**ALACHUA COUNTY AND CITY OF GAINESVILLE
AGREEMENT FOR COUNTYWIDE LOCAL OPTION FUEL TAX DISTRIBUTION**

This Agreement ("Agreement") is entered into by and between ALACHUA COUNTY, a charter county and political subdivision of Florida ("County"), and the CITY OF GAINESVILLE, a municipal corporation ("City").

RECITALS

WHEREAS, Section 336.025, Fla. Stat., permits the County the authority to levy, in addition to other taxes allowed by law, local option fuel taxes ("Countywide Local Option Fuel Tax") upon every gallon of motor fuel and special fuel sold in the County and taxed under the provisions of Chapter 206, Fla. Stat.; and

WHEREAS, the County desires to levy eleven cents of available Countywide Local Option Fuel Tax to a term from January 1, 2019, through December 31, 2028; and

WHEREAS, Section 336.025, Fla. Stat., permits the County may, prior to levy of the Countywide Local Option Fuel Tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the County; and

WHEREAS, the City is a municipality located within Alachua County, Florida, eligible to receive a portion of the Countywide Local Option Fuel Tax, and represents a majority of the population of the incorporated area within the County; and

WHEREAS, the County and City desire to enter into an interlocal agreement to provide for the division and distribution of the proceeds of any extension of the Countywide Local Option Fuel Tax by the County; and

WHEREAS, the County and City desire to enter an interlocal agreement to provide for the funding of particular transportation and public transit projects; and

WHEREAS, the County and the City are authorized by Section 163.01, Fla. Stat., to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and the County (collectively, "Parties") agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement for all purposes.

2. **Contingent on Governing Body Approval.** The Parties’ obligations and rights under this Agreement are expressly made contingent upon the approval of this Agreement by the Alachua County Board of County Commissioners (“BOCC”) and the City of Gainesville Commission (“City Commission”).

3. **Effective Date and Recording.** This Agreement shall become effective on the date the last of the Parties executes this Agreement as indicated below, subject to the contingency described in Section 2 of this Agreement (“Effective Date”). Pursuant to Section 163.01(11), Fla. Stat., the County shall file a fully executed copy of this Agreement with the Clerk of the Circuit Court of Alachua County, Florida.

4. **Terms of Agreement.**

a. **Distribution of Countywide Local Option Fuel Tax.**

- i. Upon the levy of the 1st, 2nd, 3rd, 4th, 5th and 6th cents Countywide Local Option Fuel Tax by the County, the proceeds shall be divided among, and distributed to the County and the eligible municipalities within the County from the period of January 1, 2019, through December 31, 2028, as follows:

<u>Recipient</u>	<u>Share of Proceeds</u>
Alachua County	50.00%
City of Alachua	1.87%
City of Archer	0.86%
City of Gainesville	40.80%
City of Hawthorne	1.05%
City of High Springs	2.10%
Town of Lacrosse	0.30%
Town of Micanopy	0.90%
City of Newberry	1.25%
City of Waldo	0.87%

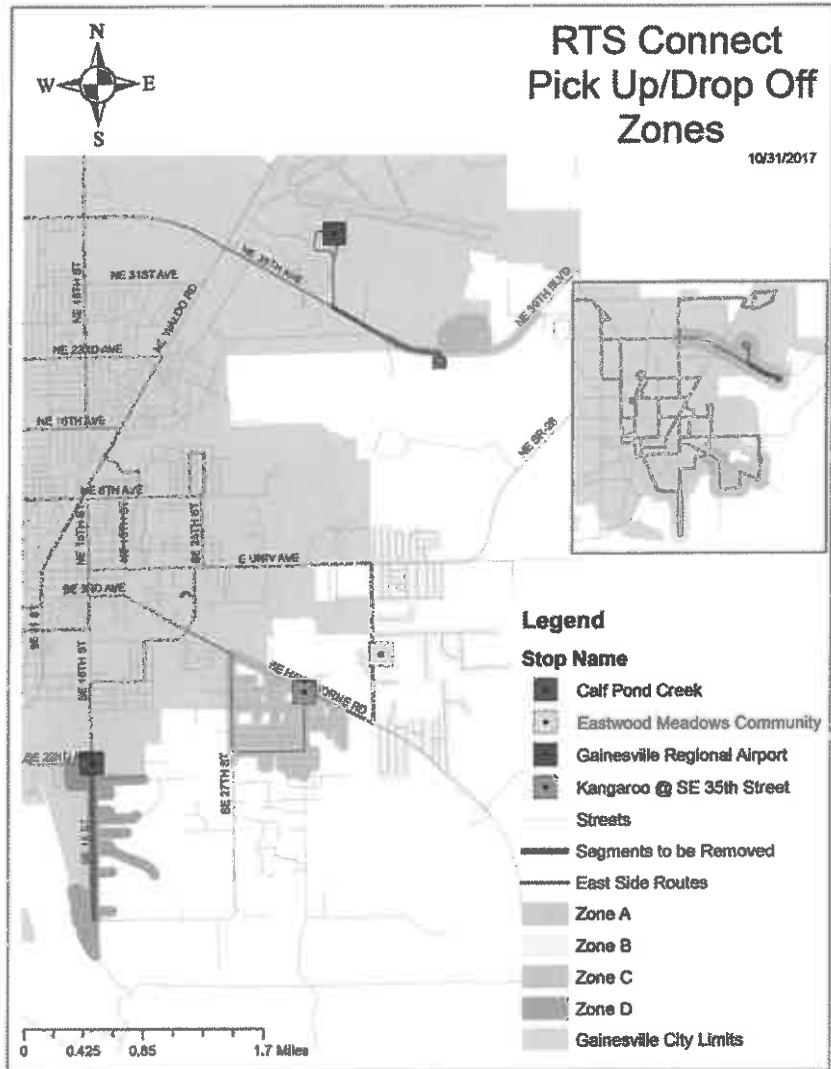
- ii. Upon the levy of the 7th, 8th, 9th, 10th and 11th cents Countywide Local Option Fuel Tax by the County, the proceeds shall be divided among, and distributed to the County and the eligible municipalities within the County from the period of January 1, 2019, through December 31, 2028, as follows:

<u>Recipient</u>	<u>Share of Proceeds</u>
Alachua County	50.00%
City of Alachua	1.87%
City of Archer	0.86%
City of Gainesville	40.80%
City of Hawthorne	1.05%

City of High Springs	2.10%
Town of Lacrosse	0.30%
Town of Micanopy	0.90%
City of Newberry	1.25%
City of Waldo	0.87%

b. Projects.

- i. Southwest 8th Avenue Connector from SW 75th Street to SW 20th Avenue.
 - 1. Description. The proposed SW 8th Avenue Connector consists of the reconstruction and reconnection of SW 8th Avenue between SW 75th Street and SW 20th Ave. It will include reconstruction of the roadway as a curb and gutter road with multimodal features. The project also includes a new signal at SW 20th Avenue with related roadway work on SW 20th Avenue including additional sidewalk connections.
 - 2. Funding. By January 1 of each calendar year of this Agreement, the City shall pay the County an amount equal to 1% of the Countywide Local Option Fuel Tax proceeds for the SW 8th Avenue Connector Project. The County shall use these funds for the SW 8th Avenue Connector Project.
 - 3. Timing. The County agrees to begin construction of this Project within 1 year of the Effective Date of this Agreement.
- ii. RTS Transit Connect (Eastside Last-Mile Pilot Project).
 - 1. Description. A First Mile/Last Mile (FM/LM) Transit Service. The mobility project will provide door-to-door (FM/LM) service for transit riders to be provided by the Regional Transit System (RTS). The project is divided into several phrases based on current transit ridership and zones. The City agrees to provide service for Zone B as demonstrated on the map below for the length of the term of the Countywide Local Option Fuel Tax.



2. Funding. The City shall fund the RTS Transit Connect Project.
 3. Timing. The City agrees to begin providing the RTS Transit Connect Project within 1 year of the Effective Date of this Agreement. Service shall be provided for the term of this Agreement.
- iii. Additional or Alternative Projects. If upon mutual agreement of the City and County that the funding prescribed for one or both of the projects above may be more beneficially used towards one or more alternative mobility projects, the City and County may mutually agree that the funding provided by the City may be transferred to the alternative project(s).
- c. **Bonding of Countywide Local Option Fuel Tax.**
- i. To pay the cost of authorized projects, the County or City may issue revenue bonds and notes of the County or City from time to time (referred to as "bonds"). Such bonds may be in coupon or registered form and in such denomination or denominations, bear interest at such rate or rates not exceeding the maximum

rates allowed by law at the time of their issuance and mature at such time or times not exceeding the December 31, 2028. The bonds may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the County or City prior to their issuance. All such specifications may be prescribed in the resolution or resolutions of the County or City authorizing the issuance of bonds thereof. The bonds may be sold at public sale or private sale as provided by law and at such price or prices as the County or City shall determine to be in their best interest. The County or City may issue refunding bonds and notes from pledged fuel taxes or other pledged revenue sources, such as sales surtaxes, for the purpose of refunding any bonds or notes then outstanding and which shall have been issued under the provisions of this agreement or any other law for the purpose of paying all or part of the cost of an authorized project.

d. ***Mutual Releases.***

- i. The County hereby waives and releases, acquits, satisfies and forever discharges the City, including any elected officials, officers, directors, shareholders, managing members and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors, and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises and demands whatsoever that the County ever had or now has, in law or in equity, for, upon or by any reason of any matter, cause or thing whatsoever in direct connection with any claim raised by any Party related to Countywide Local Option Fuel Tax distribution, as of the Effective Date of this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.
- ii. The City hereby waives and releases, acquits, satisfies and forever discharges the County, including any elected officials, officers, directors, shareholders, managing members and employees, and any and all subsidiaries, affiliates, legal representatives, insurance carriers, successors and assigns thereof, from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises and demands whatsoever that the City ever had or now has, in law or in equity, for, upon, or by any reason of any matter, cause or thing whatsoever in direct connection with any claim raised by any Party related to Countywide Local Option Fuel Tax distribution, as of the Effective Date of this Agreement. The release set forth in this provision does not apply to any rights granted by or arising from this Agreement.

5. ***Entire Agreement; Amendments.*** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. No representations have been made, either express or implied by the Parties, other than those expressly set forth in this Agreement. This Agreement or any part hereof may not be changed, amended, waived, discharged or terminated except by an instrument in writing signed by all Parties and executed with the same formality as this Agreement.

6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the Parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.
7. **Interpretation.** This Agreement shall be read and interpreted in such a manner as to give all provisions their ordinary and customary meaning, and all words, terms, and phrases not otherwise specifically defined by a capitalized term or otherwise shall have the same meaning and interpretation as customarily used among lay persons. The terms "hereby," "hereof," "herein," "hereto," "hereunder" and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. All words, terms and phrases specifically defined by a capitalized term shall apply throughout this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used. In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, and the use of any gender shall include every other and all genders.
8. **Construction; Headings.** The Parties acknowledge that they participated in the negotiation and drafting of the terms of this Agreement and acknowledge that no provision shall be strictly construed against one party or the other based solely on draftsmanship. The Parties have entered into this Agreement without duress, coercion, or under undue influence of any kind, and are motivated by a desire to avoid the costs, time, and uncertainty associated with the Subject Cases and to arrive at a fair and reasonable agreement with regard to the Parties' dispute. The Parties acknowledge that they have been represented by counsel in connection with the negotiation of the terms of this Agreement and that they enter into this Agreement freely and voluntarily, and only after consultation with their respective counsel. All sections and descriptive headings in this Agreement are inserted for convenience only, and shall neither affect the construction or interpretation hereof, nor add or subtract from the meaning of the contents of each section.
9. **Governing Law; Venue.** This Agreement shall be construed, interpreted, enforced, and governed in accordance with the laws of the State of Florida. Venue for any action arising out of or related to this Agreement shall be in Alachua County, Florida.
10. **Enforcement; Remedies.** The Parties shall have all equitable and legal remedies available under Florida law to enforce the terms and conditions of this Agreement, and the terms of this Agreement shall be specifically enforceable in court. In the event of any dispute hereunder or any action to interpret or enforce this Agreement, any provision hereof, or any matter arising herefrom, the prevailing party shall be paid by the non-prevailing party the reasonable attorneys' fees and costs incurred in enforcing its rights and remedies, whether incurred at the pre-trial, trial or appellate levels, including any fees and costs incurred in determining the amount of awardable fees.

11. **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive any right to a jury trial with respect to any claims arising in connection with this Agreement.
12. **Non-Waiver.** Failure by the Parties to insist upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be deemed to be a waiver of such terms, conditions, and provisions, and the Parties, notwithstanding such failure, shall have the right hereafter to insist upon the strict performance of any or all such terms and conditions of this Agreement as set forth herein. Any Party's waiver of any breach of this Agreement or forbearance from action shall not be a continuing waiver or a waiver of any other breach of this Agreement.
13. **Sovereign Immunity.** Nothing in this Agreement shall constitute a waiver by any party of its sovereign immunity or the provisions of Section 768.28, Fla. Stat.
14. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.
15. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any other third person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than as expressly stated herein.
16. **Purpose of this Agreement; Not Establishing Precedent.** By entering into this Agreement, the Parties do not admit any liability whatsoever to the other, or to any other person, arising out of any claims asserted in the Subject Cases, and expressly deny any and all such liability. The Parties acknowledge and agree that this Agreement is not intended by any Party to be construed, and shall not be construed, as an admission by any Party of any liability or violation of any law, statute, ordinance, regulation, agreement or other legal duty of any nature whatsoever. Rather, this Agreement is for the compromise of potential and disputed claims, involving both fact and law, and the Parties enter into this Agreement in a spirit of cooperation for the purpose of ending the Subject Cases and in recognition of the desire for the speedy and reasonable resolution of the Parties' dispute. The acceptance of proposals for purposes of this Agreement is part of a mediated settlement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances.
17. **Notices.** All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested,

postage prepaid, or by Federal Express or other nationally recognized overnight commercial delivery service, fees prepaid for next day delivery. Such notices shall be deemed to have been received: 1) upon delivery, if personally delivered; 2) upon the earlier of actual receipt or the third day after mailing, if mailed by registered or certified United States mail, return receipt requested, postage prepaid; and 3) upon the earlier of actual receipt or the next business day if sent by Federal Express or other nationally recognized overnight commercial delivery service, if fees are prepaid for next day delivery. The addresses for delivery of such notices shall be as follows, except when such other address as any party hereto shall from time to time designate to the other party by notice in writing as herein provided:

a. To the County: Michele Lieberman, Interim County Manager
Alachua County
12 SE 1st Street
Gainesville, Florida 32601

With a copy to: Sylvia Torres, Interim County Attorney
Alachua County
12 SE 1st Street
Gainesville, Florida 32601

b. To the City: Anthony Lyons, City Manager
City of Gainesville
200 E University Avenue
Gainesville, Florida 32601

With a copy to: Nicolle Shalley, City Attorney
City of Gainesville
200 E University Avenue
Gainesville, Florida 32601


IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates beneath each signature.

ALACHUA COUNTY:

ATTEST:




Jesse K. Irby, II, Clerk

By: 

Lee Pinkoson, Chair
Board of County Commissioners

Date: 12/14/2017

APPROVED AS TO FORM AND LEGALITY:



Sylvia Torres, Interim County Attorney

CITY OF GAINESVILLE:

ATTEST:

Kurt Lannon, Clerk of the Commission
City of Gainesville

By: _____
Lauren Poe, Mayor

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Nicolle M. Shalley, City Attorney