

RESOLUTION NUMBER 21-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE SHARED USE OF THE CURRENT AND PROPOSED REDEVELOPED BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a “public agency” within the meaning of the Florida Interlocal Cooperation Act of 1969 (the “Interlocal Act”), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated October 7, 2020 (the “Exchange Agreement”);

WHEREAS, upon consummation of the Exchange Agreement (the “Exchange Closing”), the School Board shall be the owner of that certain real property upon which is located the Fort Myers Beach Elementary School and certain related parking facilities and other recreational improvements adjacent to Bay Oaks Recreational Facility (“School Board Property”); and

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property (the “Town Property”); and

WHEREAS, the School Board Property contains tennis courts, a playground, a portion of a multi-sport field (the other portion of which is located on the Town Property), and certain other recreational facilities; and

WHEREAS, the Town Property contains a playground, baseball field, tennis courts, basketball court, portion of a multi-sport field (the other portion of which is located on the School Board Property), and a recreational center; and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property (collectively, the “**Shared Facilities**”); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Agreement attached hereto as Exhibit “A”, between the School Board and Town, regarding the Shared Facilities is approved. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by council Member Veach, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Bill Veach, Council Member	Aye
Jim Atterholt, Council Member	Aye

ADOPTED this 19th day of January 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



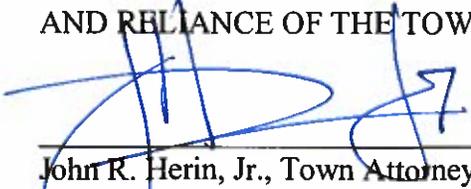
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH EXCLUSIVELY:



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21 day of January 2021.

**INTERLOCAL AGREEMENT RELATING TO
SHARED USE OF PROPERTY AND FACILITIES
BETWEEN
THE TOWN OF FORT MYERS BEACH AND
THE SCHOOL BOARD OF LEE COUNTY**

THIS INTERLOCAL AGREEMENT ("**Agreement**") is made and entered into this 19th day of January, 2021, by and between the TOWN OF FORT MYERS BEACH ("**Town**"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and the SCHOOL BOARD OF LEE COUNTY, FLORIDA ("**School Board**"); collectively referred to herein as the "**Parties**".

WITNESSETH:

WHEREAS, the School Board and the Town Council both serve the residents of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "**Interlocal Act**"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated effective October 7, 2020 (the "**Exchange Agreement**");

WHEREAS, upon consummation of the Exchange Agreement (the "**Exchange Closing**"), the School Board shall be the owner of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**School Board Property**"); and

WHEREAS, the School Board Property contains Fort Myers Beach Elementary School and certain related parking facilities and other improvements;

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "**Town Property**"); and

WHEREAS, the Town Property contains tennis courts, a playground, a baseball field, a multi-sport field, basketball courts and recreation center building; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property(collectively, the "**Shared Facilities**"); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I. PURPOSE AND EFFECTIVE

1.1 Purpose. It is the purpose and intent of this Agreement to set forth the rights and obligations of the School Board and the Town relating to the use, operation and maintenance of the Shared Facilities.

1.2 Recitals. The Recitals set forth above are incorporated into the terms of this Agreements as if set of herein at length.

1.3 Effective Date. The "Effective Date" of this Agreement shall be the date on which the later of the School Board or the Town executes this Agreement and delivers a copy thereof to other party.

SECTION II: OPERATION AND USE OF THE SHARED FACILTIES

2.1 Shared Use. The Town and the School Board shall share the use of the Shared Facilities located, subject to such terms, limitations and conditions set forth in this Section.

2.2 Exclusive and Priority Use. The School Board shall have exclusive use of the playground during regular school hours on days school is in session, as determined by the academic calendar adopted annually by the School Board. The School Board shall be given priority use of the other Shared Facilities at such times and on such dates as set forth in a separate use schedule to be mutually agreed upon and adopted by the School Board and the Town prior to the 1st of July each year (the "**Use Schedule**"). A copy of the initial Use Schedule is attached hereto as Exhibit "C", which shall be effective as of the Effective Date of this Agreement and remain in effect until an updated schedule is adopted as provided herein.

2.3 Clubs and Programming Activities. The Town and the School Board shall work together to develop a fee-based afterschool program for the benefit of School Board's students, which shall be implemented and operated by the Town at the recreational center building on Monday through Friday of each week during the academic year.. Programming shall include time set aside each day for completion of homework, structured play time, and free play. Clubs and activities may vary from time, and may include things such as swim club, community involvement club, soccer, art, and cooking. The after school program shall be open to any student enrolled in kindergarten through fifth grade at Fort Myers Beach Elementary School, and there shall be no limit on the number of students that may enroll in the after school program. All students/participants shall adhere to the operational, health and safety guidelines established by the Town Manager/Parks and Recreation Director.

2.4 Hours of Operation; Opening and Closing of Shared Facilities. The Town shall be responsible for opening and closing of the Shared Facilities consistent with the posted hours of the Shared Facilities as promulgated by the Town for use by property owners, residents, business persons, and other visitors of the Town, and the use rights of the School Board as set forth in Section II. Notwithstanding the foregoing, the School Board shall be responsible for opening the playground in the mornings when school is in session.

SECTION III: MAINTENANCE, REPAIR AND IMPROVEMENT

3.1 The Town shall, at the Town's sole cost and expense, maintain the Shared Facilities in a clean and safe condition, in good repair, and in compliance with any applicable laws or governmental regulations applicable to the Shared Facilities. The Town's obligations as provided herein shall include, but not be limited to: (i) repair or replacement of any , equipment, or parts of equipment which have excessive wear, become structurally unstable, or otherwise become unsafe, (ii) replacement and replenishment of mulch or such other fall surface utilized on the playground, (iii) landscape maintenance and pest/rodent control, (iv) cleaning and resurfacing of sports courts, and (v) cleaning and repainting of equipment and structures.

3.2 The Town shall inspect the Shared Facilities on a routine basis in order to assess the need for maintenance and repairs in connection with its obligations herein. The School Board shall have the right to inspect the Shared Facilities from time to time, as it deems necessary, to confirm the Shared Facilities are being maintained in the condition as required in this Section. In the event the School Board becomes aware that any portion of the Shared Facilities has fallen in disrepair, is unsafe, or any such other condition requiring maintenance or repair, the School Board shall promptly notify the Town of same.

SECTION IV: DEFAULT

If either party fails to materially fulfill its obligations under this Agreement that party will be considered to be in default. The other party to the Agreement shall provide written

notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party.

SECTION V: NOTICE:

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Town: Town of Fort Myers Beach, a Florida municipal corporation
Attn: Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

School Board: Lee County School Board
Kathy Dupuy-Bruno, Esq.
2855 Colonial Blvd.
Fort Myers, Florida 33966

The address to which any notice or demand may be given to either party may be changed by written notice.

SECTION V: LIABILITY AND INDEMNIFICATION

5.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

5.2 Subject to the limitations as set forth in Florida Statutes, §768.28, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act

or omission of the School Board, its agents, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

SECTION VI: MISCELLANEOUS:

The Parties represent and warrant that they have full authority to enter into and sign the Agreement. This Agreement contains the entire agreement between the Town and School Board, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction located in Lee County, Florida. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof. No modification or amendment of this Agreement shall be valid and binding on the School Board or the Town unless it is in writing and executed by or on behalf of the School Board and the Town. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto.

SECTION VII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.

SECTION VIII: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof, shall be made by either Party unless approved by both the School Board and the Town.

SECTION IX: EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month and year first written above.

The School Board of Lee County, Florida

Town of Fort Myers Beach, a Florida Municipal Corporation

By: _____

By: [Signature]

Its: _____

Its: Vice Mayor

RATIFIED AND APPROVED:

ATTESTED:

By: _____

By: [Signature]

Its: _____

Its: Town Clerk



APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____

By: [Signature]

School Board Attorney

Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of physical presence or online notarization this _____ day of _____ 2021, by _____, as _____ of The School Board of Lee County, Florida, who produced the following as identification _____ or is personally known to me and who did/did not take an oath.

[Signature of Notary]

[Typed or Printed Name]

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of physical presence or online notarization this 21 day of JANUARY 2021 2021, by REXANN HOSAEROS, as VICE MAYOR of The Town of Fort Myers Beach, a Florida municipal corporation, who produced the following as identification _____ or is personally known to me and who did/did not take an oath.



Jason Freeman
[Signature of Notary]
JASON FREEMAN
[Typed or Printed Name]