

**RESOLUTION NUMBER 21-26**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY FLORIDA, APPROVING THE TRAFFIC SIGNAL MAINTENANCE AGREEMENT WITH LEE COUNTY AND AUTHORIZING THE MAYOR TO EXECUTE SAME; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council is the governing body in and for the Town of Fort Myers Beach and the Board of County Commissioners (the "Board") is the governing body in and for Lee County; and

**WHEREAS**, the Town is authorized to enter into this Agreement; and,

**WHEREAS**, the Parties agree that it is in the public's interest to enter into an Agreement regarding the rights, duties and obligations which apply to the maintenance of certain Traffic Signals and Devices within the boundaries of the Town of Fort Myers Beach; and,

**WHEREAS**, the Florida Interlocal Cooperation Act of 1969 (the "Act") set forth in Florida Statutes Section 163.01 et seq. contemplates Interlocal Agreements between governmental entities; and,

**WHEREAS**, the purpose of the Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and,

**WHEREAS**, the Parties hereto find that entering into this Interlocal Agreement serves a public purpose and is to the public's benefit and;

**WHEREAS**, the County will maintain and receive compensation for certain Traffic Signals and Devices within the jurisdictional boundaries of the Town and;

**IT IS HEREBY RESOLVED** by the Town of Fort Myers Beach as follows:

**Section 1. Adoption of Recitals.** The above recitals as set forth in the various "Whereas" clauses are hereby adopted and incorporated into the body of this Resolution.

**Section 2. Approval and Authorization for Mayor to execute same.** The Town Council of the Town of Fort Myers Beach hereby approves the attached Agreement, authorizes the Mayor to execute same on behalf of the Town.

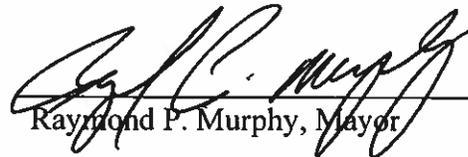
**Section 3. Effective Date.** This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing resolution was adopted by the Town Council upon motion by Vice Mayor Hosafros and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

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

ADOPTED this 7th day of June, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

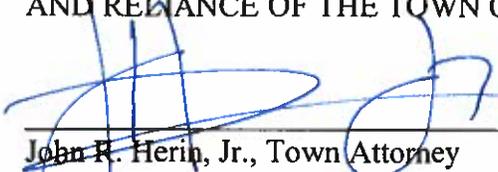
TOWN OF FORT MYERS BEACH

  
Raymond P. Murphy, 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 SOLELY:

  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 10 day of June 2021.

**INTERLOCAL AGREEMENT**  
**BY AND BETWEEN**  
**LEE COUNTY AND THE TOWN OF FORT MYERS BEACH**  
(TRAFFIC SIGNAL MAINTENANCE AND COMPENSATION)

**THIS INTERLOCAL AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between **LEE COUNTY**, a political subdivision and charter county of the State of Florida ("County"), and the **TOWN OF FORT MYERS BEACH**, a municipal corporation of the State of Florida ("Town"), collectively the Parties hereto.

**WHEREAS**, the Town Council is the governing body in and for the Town of Fort Myers Beach and the Board of County Commissioners (the "Board") is the governing body in and for Lee County; and

**WHEREAS**, the Town is authorized to enter into this Agreement; and,

**WHEREAS**, the Parties agree that it is in the public's interest to enter into an Agreement regarding the rights, duties and obligations which apply to the maintenance of certain Traffic Signals and Devices within the boundaries of the Town of Fort Myers Beach; and,

**WHEREAS**, the Florida Interlocal Cooperation Act of 1969 (the "Act") set forth in Florida Statutes Section 163.01 et seq. contemplates Interlocal Agreements between governmental entities; and,

**WHEREAS**, the purpose of the Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and,

**WHEREAS**, the Parties hereto find that entering into this Interlocal Agreement serves a public purpose and is to the public's benefit.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the COUNTY and the TOWN hereby agree as follows:

**SECTION I. PURPOSE AND INTENT.**

It is the purpose and intent of this Interlocal Agreement to define the terms and conditions under which the County will maintain and receive compensation for certain Traffic Signals and Devices within the jurisdictional boundaries of the Town. All terms and conditions of this Interlocal Agreement shall be interpreted in a manner consistent

with, and in furtherance of, the purposes as set forth above.

## **SECTION II. AUTHORITY FOR AGREEMENT.**

The Town represents to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the governing body of the Town and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Board of County Commissioners and constitutes a legal, valid and binding obligation of the County.

## **SECTION III. DEFINITIONS.**

***Control Devices*** is defined as intersection control beacons, traffic warning beacons, illuminated street name signs, pedestrian flashing beacons (i.e., school zone flashing beacons, pedestrian crossing beacons, and Rectangular Rapid Flashing Beacons).

***Interconnected and Monitored Traffic Signals*** ("IMTS") is defined as signals that are interconnected with telecommunications and are monitored at a central location.

***Traffic Signals and Devices*** is defined as follows: all traffic signals, IMTS, Traffic Signal Systems, Control Devices, blank-out signs, travel time detectors, emergency/fire Town of Fort Myers Beach signals, speed activated warning displays, and other types of traffic signals and devices specifically identified within Exhibit A, which are located on the Town Roadway network within the jurisdictional boundaries of Lee County.

***Traffic Signal Systems*** is defined as central computer, cameras, message signs, communications devices, interconnect / network, vehicle, bicycle & pedestrian detection devices, traffic signal hardware and software, preemption devices, and Uninterruptible Power Supplies ("UPS").

## **SECTION IV. COUNTY OBLIGATIONS.**

1. The County agrees to the annual maintenance and operation of Traffic Signals and Devices specifically identified within Exhibit A, which are located on the Town's Roadway network within the jurisdictional boundaries of Lee County, excluding the costs for electricity to the devices.
2. The County may remove any component of the installed equipment for repair or testing; however, it shall only make permanent modifications or equipment replacements only if the equipment provided is capable of performing at minimum the same functions as the equipment being replaced. The Town shall not make any modifications or equipment replacements without prior written notice to and consultation with the County.
3. The County shall maintain and operate the Traffic Signals and Devices in a manner

that is consistent with maintenance practices prescribed by the International Municipal Signal Association (IMSA) and operational requirements of the Manual on Uniform Traffic Control Devices (MUTCD), as amended. Any and all work performed by the County must conform to the current FDOT Standard Specifications for Road and Bridge Construction as applicable.

4. Lee County's maintenance responsibilities include, but are not limited to, locates, preventive maintenance (periodic inspection, service, and routine repairs), restoration of services, and emergency maintenance (troubleshooting in the event of equipment malfunction or failure). Restoration of services may include temporary poles and/or signals, stop signs or other methods to maintain traffic. The County shall record its maintenance activities in a traffic signal maintenance log, as they occur, and include this as part of the annual report, highlighting the time it took to restore the normal service and number of times such events occurred.

5. The County shall implement and maintain the timing and phasing of the traffic signals in accordance with the Town's timing and phasing plans, specifications, special provisions, Town re-timing projects, and the Town's Traffic Engineering Manual (if any). Traffic Signal Systems timings (cycle length, split, offsets) are considered operational changes and may be changed by the County to accommodate changing needs of traffic. The County may make changes in the signal timing provided these changes are made under the direction of a qualified Professional Engineer registered in the State of Florida. The County shall make available a copy of the timings to the Town upon request. The Town reserves the right to examine equipment, timing and phasing at any time and, after consultation with the County, may request modifications. If the Town requests modification in timing or phasing, implementation of such approved modifications will be coordinated with, or made by, the County. All signal timing and phasing records shall be retained by the County for at least three (3) years, and will be made available to the Town upon request. Any modifications to phasing or timing requested by the Town will be billable to the Town.

6. The County will note in the maintenance log any changes in timings and phasing, and keep a copy of the timings and phasing, and any approval documentation in a file. A copy of the log shall be provided to the Town upon request.

7. Lee County shall submit an annual Report to the Town prior to September 30 of each year.

## **SECTION V. TOWN OBLIGATIONS.**

1. The Town agrees to provide payment of electricity and electrical charges incurred in connection with operation of Traffic Signals and Devices upon completion of installation of each of the Traffic Signals and Devices.

2. The Town agrees to pay the County an annual compensation amount based on

the Town's fiscal year. The compensation amount consists of the cost of the maintenance and continuous operation of the Traffic Signals and Devices as identified in Exhibit A, which is attached and incorporated into this Agreement. Compensation will also be made for costs incurred for the repair and/or replacement of damaged Traffic Signals and Devices on a time and material basis. Payments by the Town will be made in accordance with Exhibit B. In the case of construction contracts, the Town shall be responsible for the payment of electricity and electrical charges incurred in connection with the operation of the Traffic Signals and Devices, and shall undertake the maintenance and continuous operation of these Traffic Signals and Devices upon final acceptance of the installation by the Town. Prior to any final acceptance of the installation by the Town, the County will have the opportunity to inspect and request modifications or corrections to the installation(s) and the Town agrees to undertake those modifications or corrections prior to final acceptance so long as the modifications or corrections comply with the Agreement, signal plans, and specifications previously approved by both the Town and the County.

3. Mast arms that the Town determines to be at the end of their useful life cycle will be replaced by the Town at their cost. The Mast arm structures are the sole responsibility of the Town and not part of the County's maintenance responsibility. In the case of a total paint failure, as determined by the Town; the Town may repaint or replace with a galvanized mast arm. The aforementioned requirement does not apply to any mast arm that was installed under a separate mast arm paint finish agreement; in such case, the terms of that agreement shall govern. If the Town request painted and/or decorated poles, the Town will be responsible for all cost associated with maintaining the paint and decorative pole.

4. The Town shall reimburse the County for the actual costs incurred by the County for repairs and/or replacement of Traffic Signals and Devices that are damaged in accordance with Exhibit C, once the following occurs:

- a. The Town has approved a properly completed invoice for reimbursement that was provided to the Town outlining the details of the requested reimbursements; and
- b. Evidence of the costs incurred are included as an attachment to the invoice.

## **SECTION VI. TERMINATION.**

To terminate this Agreement a minimum notice period of two (2) years plus the remaining months of the Town's fiscal year shall be provided to the other party in writing. Should either Party provide its written notice of termination, the notice shall be endorsed by the County Commission or Town Council (respectively).

## **SECTION VII. MISCELLANEOUS.**

1. This Agreement may not be assigned or transferred by Lee County in whole or in part without prior written consent of the Town.

2. Neither the County nor the Town shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by a Force Majeure Event and provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible. A "Force Majeure Event" means the occurrence of:

(a) an act of war, hostilities, invasion, act of foreign enemies, riot, terrorism or civil disorder;

(b) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, hurricanes, storms, lightning, tornados, tidal waves, floods, extreme weather or environmental conditions, and other natural calamities);

(c) or another event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence.

3. Annual Update. The County and the Town shall update Exhibit A on an annual basis through an annual exhibit update of this Agreement. The County designates the Director of Transportation and the Town designates the Town Manager as their authorized representatives or their designees, who are delegated the authority to execute any and all updates and amendments to Exhibit A of this Agreement on behalf of Lee County and the Town of Fort Myers Beach (Exhibit A contains a list of Traffic Signals and Devices that identifies their location and type).

No changes or modifications may be made to Exhibit A during the Town's fiscal year for compensation. Traffic Signals and Devices added by the Town during its fiscal year must be maintained and operated by Lee County upon the Town's final acceptance of installation of the new Traffic Signals and Devices. Lee County and the Town shall amend Exhibit A prior to the start of each new fiscal year of the Town to reflect the addition or removal of Traffic Signals and Devices. Lee County will begin receiving compensation for new Traffic Signals and Devices that were added to Exhibit A by amendment of this Agreement in the Town's fiscal year occurring after the Traffic Signals and Devices are installed and final acceptance of such installation is given by the Town. In the event that no change has been made to the previous year's Exhibit A, notice from the County shall be provided to the Town providing that no change has been made to Exhibit A in the Town's previous fiscal year.

The annual compensation will be a lump sum payment as set forth in Exhibit B. Future payments will be based on the information provided in Exhibit A, in accordance with the provisions as set forth in Exhibit B, attached to and incorporated in this Agreement. Some of the Traffic Signals and Devices may not be listed in Exhibit A because the cost of operating and maintaining such devices is relatively small. The County has factored in these costs and the compensation provided through this Agreement also covers the cost

of operation and maintenance for Traffic Signals and Devices that are not listed in Exhibit A.

4. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the County and the Town.

5. 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.

6. In no case shall either Party be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, or any other damages of any kind.

**SECTION VIII. MODIFICATION.**

This Agreement may not be modified unless such modifications are in the form of a written amendment, executed by both Parties.

**SECTION IX. APPLICABLE LAW.**

This Agreement shall be construed and interpreted according to the laws, rules and regulations of the City, the County and the State of Florida.

**SECTION X. ENTIRE AGREEMENT.**

This Agreement, including any incorporated exhibits or amendments, constitutes the entire Agreement between the Parties and shall supersede and control over any or all prior Agreements or understandings, either written or oral, relating to the matters herein.

**SECTION XI. NOTICES.**

All notices or demands 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:

Lee County: Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902-0398  
Attention: County Manager

Town of Fort Myers Beach: Town of Fort Myers Beach Council  
2525 Estero Blvd  
Fort Myers Beach, Florida 33931  
Attention: Town Manager

The address to which any notice or demand may be given to either party may be changed in writing.

**SECTION XII. EFFECTIVE DATE.**

This Agreement will be effective on the last date signed by the Chair or Vice-Chair of the Board of County Commissioners of Lee County, Florida, or City Council.

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed on the day and year first written above.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Clerk, Town of Fort Myers Beach

By: \_\_\_\_\_  
Raymond P. Murphy, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Attorney

ATTEST: LINDA DOGGETT  
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Kevin Ruane, Chairman

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

By: \_\_\_\_\_  
Office of the County Attorney

## EXHIBIT A

### Compensation for Maintaining Traffic Signals and Devices for Fiscal Year

Effective Date: 10/01/2021				
Traffic Signal Location	Traffic Signal - Interconnected and Monitored (IMTS)	Uninterruptible Power Supply	Total cost	Prorated for 2021
Estero Blvd / Fifth Street and Old San Carlos Blvd	\$5,139.00	\$116.00	\$5,255.00	0.00%

*\*Note: 2022 / 2023 fiscal year cost will be \$5,255.00 plus the Consumer Price Index (CPI); See Exhibit B.*

Actual dollars come from FDOT agreement with Lee County. Lee County charges the same amount that FDOT pays Lee County to maintain their signals. The Prorated amount will be determined by the date the County takes over maintenance of the signal.

## **EXHIBIT B**

### **TRAFFIC SIGNAL MAINTENANCE AND COMPENSATION AGREEMENT**

1. **PURPOSE:** This exhibit defines the method and limits of compensation to be made to Lee County for the services described in this Agreement and in Exhibit A and method by which payments will be made.
2. **COMPENSATION FOR MAINTENANCE AND OPERATION:** For the completion of all services related to maintenance and operation detailed in this Agreement and Exhibit A of this Agreement, the Town will pay the County the Total Lump Sum in Exhibit A. Lee County will receive one lump sum at the end of each fiscal year for completion of service.
3. Total Lump Sum Amount for each fiscal year is calculated by adding all of the individual intersection amounts. Pedestrian Flashing Beacon: includes school zone beacons, pedestrian crossing beacons, and rectangular rapid flashing beacons (RRFB). School zones, crosswalks and warning sign locations shall not be grouped together and shall be paid at a per unit rate as shown in Exhibit A.

#### **Unit Compensation Rates per Intersection**

Compensation pro-rata based on intersection approaches or legs.

Based on the Consumer Price Index (CPI), the Unit Rate for the following fiscal year will be adjusted accordingly, unless otherwise specified in an amendment to this Agreement. However, if CPI is negative, there shall be no reduction from the previous year's compensation.

4. **COMPENSATION FOR REPAIR AND/OR REPLACEMENT OF DAMAGED TRAFFIC SIGNALS AND DEVICES:** For the completion of all services related to repair and/or replacement of damaged Traffic Signals and Devices detailed in this Agreement, the Town will pay Lee County a Lump Sum amount of the actual costs incurred for the replacement and/or repair of the damaged Traffic Signals and Devices as set forth in the invoice submitted to the Town. For the purposes of reimbursement, a damaged traffic signal or device is a traffic signal or device that has completely failed to operate or is causing a hazardous safety condition as a result of an event that is outside of the County's control. The invoice for the costs incurred for the replacement and/or repair of Damaged Traffic Signals and Devices shall contain the information required in Exhibit C and any other additional information requested by the Town of Fort Myers Beach.
5. **PAYMENT PROCESSING:** For regular maintenance costs, Lee County shall invoice the Town in a format acceptable to the Town, on an annual basis for the reimbursement costs incurred by Lee County for the previous year prior to September

30th of each year.

For costs incurred for repair and/or replacement of damaged Traffic Signals and Devices, applicable reimbursements will be processed after the Town receives a properly completed invoice from the County. The County shall submit invoices for repair and/or replacement costs due to damaged Traffic Signals and Devices at least on an annual basis; but, Lee County may also submit such invoices to the Town on a quarterly basis.

## **EXHIBIT C**

### **Reimbursement for Replacement and/or Repair of Damaged**

#### **Traffic Signals and Devices**

The Town will reimburse the County a Lump Sum amount for costs incurred for the replacement and/or repair of Traffic Signals and Devices damaged as a result of third parties or as a result of other causes that were not caused by the County.

The County is not required to provide a police report in situations where damage is caused to Traffic Signals and Devices by a Force Majeure Event or as a result of other causes beyond the control of the County that do not necessarily prevent performance, which includes but is not limited to: storms, winds, lightning, flooding and other natural and weather related causes. The County must provide a police report in all situations where a traffic accident, theft, or vandalism causes damage to Traffic Signals and Devices to the extent the County has the ability and opportunity to obtain a police report.

Applicable reimbursements will be processed after the Town receives a properly completed invoice from the County. The following information shall be provided by Lee County to be eligible for the reimbursement payment:

Lee County hereby certifies that it has replaced and repaired all the Traffic Signals and Devices at the location or signalized intersection referenced above. Henceforth, this document is Lee County's request for reimbursement to the Town of Fort Myers Beach for the services of restoring the Traffic Signals and Devices to their original operating condition.

The Parties agree to the Total Lump Sum Reimbursement Amount set forth above, a detail report on Labor and Materials expended for the repair will be provided.