

RESOLUTION NUMBER 22-18

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN MAINTENANCE AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN FOR THE MAINTENANCE OF THE LEASED AREA UNDERNEATH MATANZAS PASS BRIDGE, INCLUDING DINGHY DOCK AND AUTHORIZING THE MAYOR OR TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town has the authority to enter into an Agreement with the State of Florida Department of Transportation (“FDOT”) obligating the Town to perform maintenance services of the leased area underneath Matanzas Pass Bridge, including the appurtenant dinghy dock (“Maintenance Agreement”); and

WHEREAS, the Town Council deems it to be in the best interests of the business owners, residents, and visitors of the Town to enter into the Maintenance Agreement with FDOT.

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

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The Maintenance Agreement between the Town and FDOT, a copy of which is attached as Exhibit “A” is approved. The Mayor is authorized to execute the Maintenance Agreement on behalf of the Town, and the City Manager is authorized to expend budgeted funds on behalf of the Town to implement the Maintenance Agreement.

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

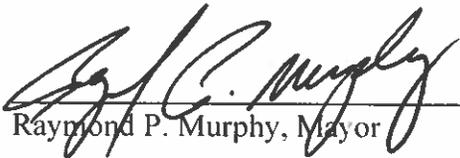
THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member Veach and seconded by Vice Mayor Hosafros and, upon being put to a vote, the result was as follows:

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

ADOPTED this 2nd day of May 2022, by the Town Council of the Town of Fort Myers Beach, Florida.



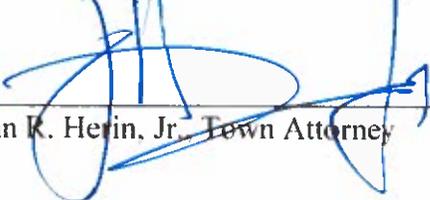
TOWN OF FORT MYERS BEACH


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 K. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 5 day of May 2022.

MAINTENANCE AGREEMENT: Town of Fort Myers Beach
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MAINTENANCE AGREEMENT
BETWEEN
FLORIDA DEPARTMENT OF TRANSPORTATION
AND
TOWN OF FORT MYERS BEACH

This Maintenance Agreement, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter, the "DEPARTMENT") and the Town of Fort Myers Beach (hereinafter, "LOCAL AGENCY") for the maintenance of dinghy floating docks and other items under the Matanzas Pass Bridge as outlined below (hereinafter "AGREEMENT").

WITNESSETH:

1. WHEREAS, the LOCAL AGENCY owns one Dinghy Dock and one stationary wooden dock that provides access to the Dinghy Dock located under SR 865 (San Carlos Parkway) Matanzas Pass Bridge in Section 12004-000 within the DEPARTMENT'S right of way; and
2. WHEREAS, the LOCAL AGENCY owns other items listed in **Exhibit A** and made a part hereof, and
3. WHEREAS, the LOCAL AGENCY wishes to retain ownership of the docks and other items listed in Exhibit A, agrees to maintain said docks and other items, and
4. WHEREAS, the docks and other items benefit the LOCAL AGENCY; and
5. WHEREAS, in accordance with §335.055 Florida Statutes, there must be a contract with the LOCAL AGENCY to maintain the docks and other items; and
6. WHEREAS, the LOCAL AGENCY by Resolution No. 22-18, dated 2 May ~~April~~ 2022, a copy of which is attached hereto as **Exhibit B** and made a part hereof, has consented to and approved this AGREEMENT and has authorized its Chairperson or designee to execute said AGREEMENT.

NOW, THEREFORE, in consideration of the premises and other good and valid consideration, the parties agree as follows:

1. The LOCAL AGENCY, at the LOCAL AGENCY'S sole cost and expense, will maintain the docks and other items including but not limited to routine maintenance of decks, handrails, floating apparatus, and all other components of the docks.
2. The LOCAL AGENCY may utilize its employees or third parties to accomplish its obligations under this AGREEMENT. However, the LOCAL AGENCY remains responsible for proper performance under this AGREEMENT and shall take all steps necessary to ensure that its employees or third parties perform as required under this AGREEMENT.

MAINTENANCE AGREEMENT: Town of Fort Myers Beach
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3. It is understood between the parties hereto that the docks and other items covered by this AGREEMENT may be requested to be removed, relocated, or adjusted by the LOCAL AGENCY at any time in the future as determined to be necessary at the sole discretion of the DEPARTMENT for bridge repair, construction projects, emergency department repairs or to widen, alter or otherwise change the DEPARTMENT'S right-of-way. The DEPARTMENT shall give the LOCAL AGENCY reasonable notice regarding such removal, relocation, or adjustment. Said removal, adjustment, or relocation may be temporary or permanent at the discretion of the DEPARTMENT and the LOCAL AGENCY will be solely responsible for all expenses and costs for the removal, relocation, or adjustment.
4. The DEPARTMENT may inspect or evaluate the facility at any time to ascertain compliance with the maintenance standards. If it is found the facility is not maintained pursuant to the terms of this AGREEMENT, the DEPARTMENT may issue written notice to the LOCAL AGENCY of the deficiencies that need to be addressed. Upon receipt of the notice, the LOCAL AGENCY shall have a period of thirty (30) calendar days to correct the cited deficiencies, unless the deficiencies are of such a nature that they are deemed an emergency by the DEPARTMENT, in which case the deficiencies will need to be immediately corrected by the LOCAL AGENCY within a time frame to be issued by the DEPARTMENT unless the DEPARTMENT deems the emergency to be severe so that the docks and other items will be required to be immediately removed by the LOCAL AGENCY. If said deficiencies are not corrected within the time periods above, the DEPARTMENT may at its option, terminate this AGREEMENT and proceed as follows:
 - a. Correct the deficiencies itself and invoice the LOCAL AGENCY for costs and expenses incurred to be immediately reimbursed by the LOCAL AGENCY;
 - b. Remove the dock(s) and other items and invoice the LOCAL AGENCY for costs and expenses, including those connected with disposal.
5. The LOCAL AGENCY shall carry and keep in force during the period of the Agreement, a general liability insurance policy with a company authorized to do business in Florida, affording public liability insurance including workers compensation and with combined bodily injury limits of at least \$5,000,000.00 general aggregate and \$1,000,000.00 per occurrence. The DEPARTMENT shall be named co-insured for the services to be rendered in accordance with this AGREEMENT and an Acord document with endorsements shall be presented to the DEPARTMENT with proof of same. In the alternative, the LOCAL AGENCY may satisfy the requirements of this paragraph by providing to the DEPARTMENT written evidence of the LOCAL AGENCY'S self-insurance program.
6. To the express limits of Section 769.28, Florida Statutes, the LOCAL AGENCY shall indemnify, defend, and hold harmless DEPARTMENT against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of the

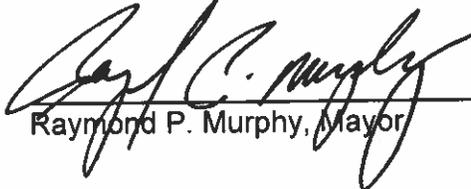
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LOCAL AGENCY, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with this AGREEMENT'S obligations and rights granted to or exercised by the LOCAL AGENCY. The foregoing indemnification shall not constitute a waiver of sovereign immunity by the LOCAL AGENCY beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by the LOCAL AGENCY to indemnify DEPARTMENT for the negligent acts or omissions of DEPARTMENT. Nothing herein shall be construed as consent by the LOCAL AGENCY to be sued by third parties in any manner arising out of this AGREEMENT. The indemnities assumed by the LOCAL AGENCY shall survive termination of this AGREEMENT.

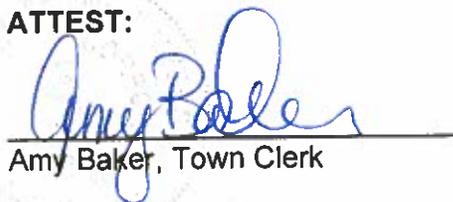
7. The document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.
8. This Agreement shall be governed, interpreted, and construed according to the laws of the State of Florida.
9. This Agreement shall become effective on: _____, 2022.
To be filled out when executed by FDOT.

IN WITNESS WHEREOF, the TOWN OF FORT MYERS BEACH has caused this Agreement to be executed on its behalf through its Mayor or designee, and THE FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary for District One, as indicated below.

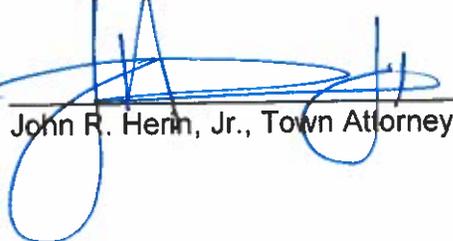
TOWN OF FORT MYERS BEACH


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 ONLY:


John R. Herrin, Jr., Town Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: _____
DISTRICT ONE SECRETARY OR DESIGNEE

PRINT NAME

TITLE

ATTEST:

BY: _____

PRINT NAME

TITLE

FLORIDA DEPARTMENT OF TRANSPORTATION LEGAL REVIEW:

BY: ^{DS}
DC _____

Exhibit A,
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EXHIBIT A

Items to be included in the attached maintenance agreement for the Town of Fort Myers Beach lease of space under Mantanzas Pass Bridge in section 12004-000 and within the Departments Right of Way:

1. Parking Lot Asphalt
2. Sidewalk
3. Parking Signs and Curb Stops
4. Wash downs/Water hose bibs
5. Sign Board
6. Clean Up After Your Doggie Bag Holders and Posts and Guard Rail
7. Two Sets of Stairs Out of Water
8. Bike Racks
9. Trash Cans
10. Landscaping
11. Dinghy Dock
12. Dock leading to Dinghy Dock