

**1. Requested Motion:**

**Meeting Date:**

Give direction to Town Staff and the Town Attorney regarding outstanding issues in the draft Bay Oaks School District Interlocal .

October 5, 2009

Why the action is necessary:

This will enable staff and the Town Attorney to move forward to final resolution of outstanding issues with the School District and bring an agreed-upon Interlocal Agreement forward to Council.

What the action accomplishes:

This will provide necessary policy direction from the Town Council.

**2. Agenda:**

- Consent
- Administrative
- Town Attorney

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other: Direction

**4. Submitter of Information:**

- Council
- Department: Town Manager
- Town Attorney

**5. Background:**

Pursuant to Town Council direction, the Town Manager and the Town Attorney have been negotiating the remaining issues with corresponding School District staff and attorney. Attached is the most recent draft interlocal agreement outlining the remaining issues for resolution prior to the parties' execution of a mutually agreeable interlocal agreement. .

The Town Manager and Town Attorney are hopeful that these issues will be successfully resolved prior to the date of the next Town Council meeting. If not, further direction will be sought at that time.

The attached Interlocal Agreement has annotations to indicate what the outstanding issues are and what the parties' respective positions on those issues is as of the date of submission of this blue sheet.

Attachment: Draft Interlocal Agreement with the School District for Bay Oaks.

**6. Alternative Action:** Unknown.

**7. Management Recommendations:**

**8. Recommended Approval:**

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
				AD	

**9. Council Action:**

- Approved
- Denied
- Deferred
- Other

**INTERLOCAL AGREEMENT BETWEEN SCHOOL BOARD OF LEE COUNTY  
AND THE TOWN OF FORT MYERS BEACH FOR USE OF  
FORT MYERS BEACH ELEMENTARY SCHOOL RECREATIONAL FACILITIES**

This INTERLOCAL AGREEMENT is made and entered into this \_\_ day of \_\_\_\_\_ 2009, by and between the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council, the governing body thereof, hereafter referred to as "Town", and the SCHOOL BOARD OF LEE COUNTY, FLORIDA, hereafter referred to as "School Board".

**WITNESSETH:**

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

WHEREAS, the Town is a municipal corporation of the State of Florida, governed by Chapter 166, Florida Statutes, with those powers and responsibilities enumerated therein, and is empowered by Chapter 163, Florida Statutes to enter into Interlocal Agreements with School Districts within the State of Florida; and

WHEREAS, the School District has all of the powers enumerated in Chapter 1001 of Florida Statutes, and is empowered by Chapter 163 Florida Statutes to enter into Interlocal Agreements; and

WHEREAS, the School District of Lee County, Florida, owns certain real property known as the Fort Myers Beach Elementary School, with a street address of 2751 Oak Street, a STRAP number of 19-46-24-W3-002J0.0040 and a legal description which is attached hereto as Exhibit "A" and hereby incorporated by reference (hereafter "the Beach School property")

WHEREAS, the Town ~~is simultaneously~~ has entered into an Interlocal Agreement with Lee County to acquire the property adjacent to the Beach School property, which property is known as "the Bay Oaks Recreational Facility", with a street address of 2731 Oak Street, a STRAP number of 19-46-24-W3-0020D.0010 and a legal description which is attached hereto as Exhibit "B" (hereafter "BORC"), which is adjacent to the Beach School property; and

WHEREAS, a portion of the Beach School property contains tennis courts and a playground; and

WHEREAS, there is a baseball field and a Frisbee golf course which is located partially on the Beach School property and partially on the BORC; and

WHEREAS, the Town owns a storage shed which is on Beach School property by virtue of its conveyance by Lee County to the Town as part of the BORC transfer; and

WHEREAS, the Town Council of the Town of Fort Myers Beach and the School Board for the School District of Lee County, Florida have each separately determined that it is in the best interest of the owners, residents, businesspersons, and other citizens of the Town of Fort Myers Beach and Lee County, Florida for the Town and the School District to share the use, operation, maintenance and capital costs for the playground, the baseball field, the Frisbee golf

course and the tennis courts and have separately authorized the terms and conditions of this Agreement, in accordance with Florida Statute and local ordinance; and

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

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the School Board and the Town, intending to be legally bound, hereby agree as follows:

## **SECTION I. PURPOSE**

1. It is the purpose and intent of this Agreement to define the terms and conditions for the Town's use of the tennis courts, field Frisbee golf course, and playground located on School Board property and the parties' sharing of capital expenditures and maintenance of same. All terms and conditions of this Agreement will be interpreted in a manner consistent with and in furtherance of the purpose as set forth in this Section.

2. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.

## **SECTION II: OBLIGATIONS OF THE SCHOOL BOARD**

1. When school is in session, the School Board will open the playground in the mornings.

2. School Board will conduct annual inspections of the playground and repair or replace any equipment or parts of equipment which are unsafe or have excessive wear. The School Board will also refresh the fall surface as needed. The School Board ~~to~~ will pay the cost of the repairs and replacement (including fall surface) up front and the Town will reimburse thirty (30%) percent thereof to School Board within thirty (30) days of receipt of proper documentation thereof. **Note: Town had suggested 10% contribution.**

3. The School Board will be solely responsible for paying the capital cost(s) for any replacement or improvement to the playground, playground equipment, Frisbee golf course or tennis courts which is initiated by the School Board. In addition, the School Board will make any improvements to the field or tennis courts as required to address safety concerns. Should such an improvement be needed, the School Board will provide written notice to the Town in advance of making the improvement and the parties will negotiate payment of such cost at that time. **Note: part of this language was in School District's draft and part was from prior Town draft.**

## **SECTION III: OBLIGATIONS OF THE TOWN**

1. Town will maintain the field, **Frisbee golf course**, storage shed and tennis courts located on School Board property at the Town's sole cost. The Town will be solely responsible for paying the capital cost for any replacement or improvement to the field storage shed or tennis courts which is initiated by the Town. ~~The School Board will not make any improvements to the field or tennis courts unless required to address safety concerns. Should such an improvement be needed, the School Board will provide written notice to the Town in advance of making the improvement.~~ **Note: the School District added the Frisbee golf course to this.**

2. Town will close the playground and Frisbee golf course in the evening. On those days when school is not in session, the Town will be responsible to open the playground and Frisbee golf course as well as close them. ~~it~~.

#### **SECTION IV: JOINT OBLIGATIONS**

If the parties jointly agree that replacement or improvement to the playground or playground equipment or Frisbee golf course or tennis courts or field is needed, they will equally share such capital cost.

#### **SECTION V: USE OF FACILITIES**

1. The School Board will have exclusive use of the playground and Frisbee golf course during regular school hours on days that school is in session. The School Board will have the ability to use the tennis courts, playground and field at such ~~other~~ times as are mutually agreeable between the parties.

2. The Town will have unrestricted use of the tennis courts and field and its storage shed. ~~when not scheduled for use by the School Board.~~ In addition, the Town will have use of the Frisbee golf course and playground other than as set forth in Section V (1) above. ~~The Town will have use of the Frisbee golf course after school and when school is not in session. There will be no access to the Frisbee golf course during school hours. None of the facilities will be used prior to 7 AM or after 10 PM.~~ **Note; some of this language has been consolidated for clarity's sake. The School District's proposed language prohibiting use of the facilities prior to 7 am or after 10 pm has been deleted.**

#### **SECTION VI: TERM AND FIRST RIGHT OF REFUSAL**

1. The initial term of this Agreement shall be for a period of ten (10) years, ~~however, should the School Board require use of all or a portion of the Beach School property which contains the facilities in order to fulfill an educational need, the School Board will have the ability to terminate this Agreement as to all or a portion of the facilities by providing one hundred twenty days advance written notice.~~ After the expiration of the initial term, this Agreement will automatically renew annually unless either party elects to terminate the Agreement by providing ninety (90) days advance written notice. **Note: the District's original proposal was for a 3 year agreement and the Town proposed 20 years. The 10 year proposal is from the School District. The termination upon 120 days' notice is a new proposal from the School District.**

2. If at any time the School Board determines to divest itself of ownership or use of the Beach School Property, the Town will have the first right of refusal to purchase or lease such property, as the case may be.

#### **SECTION VII: LIABILITY**

1. Each party agrees to exercise reasonable care in the conduct of its activities during its use of the tennis courts, Frisbee golf course, field and playground as described in this Agreement. Each party further agrees to repair, replace or reimburse the other for any damages to the tennis courts, field and/or playground caused by such party's employees, invitees, or representatives who use the facility as a result of this Agreement, other than normal wear and tear.

2. a. Subject to the limitations as set out in Florida Statutes §768.28, the Town shall defend, hold harmless and indemnify 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 to fulfill its obligations set forth hereunder. The provisions of this paragraph are not intended to abrogate the sovereign immunity of Town beyond that set forth in Section 768.28, Florida Statutes.

b. Subject to the limitations as set forth in Florida Statutes, §768.28, School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability cost 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 acts or omissions of School Board, its agents, employees, and contractors to fulfill its obligations set forth hereunder. The provisions of this paragraph are not intended to abrogate the sovereign immunity of School Board beyond that set forth in Section 768.28, Florida Statutes.

2. 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.

3. No change or modification to this Agreement shall be effective unless the same is in writing and signed by both parties.

#### **SECTION VIII: DEFAULT**

If either party fails to fulfill its material obligations under this Agreement that party will be considered to be in default. Subject to the provisions of Section X (Dispute Resolution) set forth below, 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. 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 IX: CONTACT PERSON**

The Town Manager or his/her designee shall be the Town's contact person with the School Board, and the Executive Director of School Support or his/her designee shall be the School Board's contact person with the Town for purposes of this Agreement.

#### **SECTION X: 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 X: 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.

**IN WITNESS WHEREOF**, the Town and School Board hereto have set their hands and seals on the date and year indicated.

The School Board of Lee County, Florida

The Town of Fort Myers Beach, a Florida  
Municipal Corp

By: \_\_\_\_\_  
James W. Browder, Ed.D.  
Its: Superintendent

By: \_\_\_\_\_  
Larry Kiker, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RATIFIED AND APPROVED:

ATTESTED:

By: \_\_\_\_\_  
Jane E. Kuckel, Ph.D.  
Its: Chairman

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Keith B. Martin, Esq.

By: \_\_\_\_\_  
Anne Dalton, Esq., Town Attorney

Exhibit "A"

All of Blocks J and I and Lots Ten to Twenty-Four (10-24), inclusive, in Block D of Winkler's Subdivision according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida in Plat Book 8, Page 45.

LESS AND EXCEPT THE FOLLOWING:

A parcel of land situated in the State of Florida, County of Lee, lying in Section 19, Township 46 South, Range 24 East, and being a part of Block I of Winkler's Subdivision as recorded in Plat Book 8 at Page 45 of the Public Records of Lee County, Florida and further described as follows:

Beginning at the Northeasterly corner of Lot 1, Block I of said subdivision, thence N.88°31'17"W. for 123.88 feet; thence S.57°04'49"W. for 29.41 feet; thence S.37°13'55"W. for 102.21 feet to the Southwesterly corner of Lot 7 of said Block I; thence N.25°17'00"E. along the Westerly line of said Block I for 150.00 feet to the beginning of a curve concave to the Southeast and having a radius of 25.00 feet; thence Northeasterly along said curve through a central angle of 90°00'00" for 39.27 feet to the Northerly line of said Block I; thence S.64°43'00"E. along the Northerly line of said Block I for 125.00 feet to the point of beginning.

Subject to easements, restrictions, reservations and rights of way of record.

Bearings are based on the Northerly line of Block I as bearing S.64°43'00"E.

AND

A parcel of land situated in the State of Florida, County of Lee, lying in Section 19, Township 46 South, Range 24 East, and being a part of Block I of Winkler's Subdivision as recorded in Plat Book 8 at Page 45 of the Public Records of Lee County, Florida and further described as follows:

Beginning at the Northeasterly corner of Lot 1, Block I of said subdivision, thence S.64°43'00"E. along the North line of said Block I for 125.00 feet to the beginning of a curve concave to the Southwest and having a radius of 25.00 feet; thence Southeasterly along said curve through a central angle of 90°00'00" for 39.27 feet to the Easterly line of said Block I; thence S.25°17'00"W. along the Easterly line of said Block I for 25.00 feet to the Southeasterly corner of Lot 25 of said Block; thence N.46°16'54"W. for 158.11 feet to the point of beginning.

Subject to easements, restrictions, reservations and rights of way of record.

Bearings are based on the Northerly line of Block I as bearing S.64°43'00"E.

AND

A parcel or tract of land situated in the State of Florida, County of Lee, lying in Section 19, Township 46 South, Range 24 East, and being a part of Block J of Winkler's Subdivision as recorded in Plat Book 8 at Page 45 of the Public Records of Lee County, Florida and further described as follows:

Beginning at the Northeasterly corner of Lot 1, Block J of said subdivision, thence S.64°43'00"E along the Northerly line of said Block for 40.00 feet; thence S.25°17'00"W for 105.00 feet;

thence N.57°35'30"W. for 40.31 feet; thence N.49°56'29"W. for 155.13 feet to the Westerly line of said Block; thence N.25°17'00"E. along the Westerly line of said Block for 35.44 feet to the beginning of a curve concave to the Southeast and having a radius of 25.00 feet; thence Northeasterly along said curve through a central angle of 90°00'00" for 39.27 feet to the Northerly line of said block; thence S.64°43'00"E. along Northerly line of said block for 125.00 feet to the point of beginning.

Subject to easements, restrictions, reservations and rights of way of record.

Bearings are based on the Northerly line of Block J as bearing S.64°43'00"E.

AND

A parcel or tract of land lying in the State of Florida, County of Lee, being a part of Section 19, Township 46 South, Range 24 East, and being a part of Block J of Winkler Subdivision as recorded in Plat Book 8 at Page 45 of the public records of Lee County, Florida and more particularly described as follows:

Commencing at the Northwesterly most corner of Lot 48 of said Block J; thence S.64°43'00"E. along the Northerly line of said Lot 48, Block J for 40.00 feet to the point of beginning of the herein described parcel; thence continue S.64°43'00"E. along said Northerly line for 85.00 feet to the beginning of a curve concave to the Southwest and having a radius of 25.00 feet; thence Southeasterly along said curve through a central angle of 90°00'00" for an arc distance of 39.27 feet; thence S.25°17'00"W. along the Easterly line of said Block J and the Westerly right-of-way line of Bay Street (50 feet wide) for 230.00 feet; thence N.10°43'00" W. for 50.00 feet to the beginning of a curve concave to the Southwest and having a radius of 65.00 feet; thence Northwesterly along said curve through a central angle of 46°44'28" for an arc distance of 53.03 feet; thence N.14°17'00"E. for 66.02 feet; thence N.26°43'00"W. for 30.00 feet; thence N.25°27'00"E. for 105.00 feet to the point of beginning.

Bearings are based on the Westerly right-of-way line of Bay Street as bearing S.25°27'00"W.

Exhibit "B"

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