

**FACILITY USE AGREEMENT FOR POLICE OFFICER TRAINING
BETWEEN THE CITY OF DELRAY BEACH AND THE SCHOOL BOARD OF PALM
BEACH COUNTY FOR THE USE OF FORMER PLUMOSA ELEMENTARY SCHOOL**

This Facility Use Agreement for Police Officer Training is made the ____ day of _____, 2017, between the City of Delray Beach, a Florida municipal corporation (the "City") and the School Board of Palm Beach County, Florida, a corporate body politic pursuant to the Constitution of the State of Florida ("Board"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments 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 that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies, as defined therein, to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the City desires to use the campus and building ("Board Facilities") on property owned by the Board known as the former Plumosa Elementary School ("School"), as more particularly depicted on Exhibit "A" attached hereto and made a part hereof, for training City Police Department employees.

NOW THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

1. Recitals.

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Purpose.

A. The purpose of this Agreement is to enable the City to utilize the Board Facilities for City Police Department employee training purposes ("Training").

B. The Board Facilities shall be made available to the City according to the Priority of Use at no cost or expense to the City except as provided for in this Agreement. The City's use of the Board Facilities shall be subject to and in accordance with:

1. The terms and conditions of this Agreement;
2. The School Board's rules, regulations and policies governing the use of Board Facilities;
3. All applicable local, state, and federal laws.

C. "Priority of Use" shall mean the priority of uses when there are conflicting requests for the use of a Board Facility.

1. School Board activities and programs or School Board Facility lease agreements;
2. The City's Training pursuant to this Agreement.

3. Obligations of the City.

A. The City shall use the Board Facilities solely for City's employee training and for no other purposes, unless expressly agreed to by the Board and City. The City shall coordinate in advance all Training with the Board's Chief of Police, or his/her designee ("Board's Chief of Police"). Use of the Board Facilities for Training shall be at the sole and absolute discretion of the Board's Chief of Police, taking into account the Board activities scheduled during the time of the proposed Training.

B. The City acknowledges and confirms that it shall, at all times relevant to this Agreement, have full and sole control over the course and scope of the Training. The City shall provide adequate supervision of its Training to prevent bodily harm to the City's employees participating in the Training together with Board's employees, agents, invitees and damage to the Board's real and personal property in the vicinity of the Board Facilities. All Training shall be conducted in accordance with industry safety standards to minimize the risk exposure.

C. The City shall not make any modifications to the Board Facilities without the prior written consent of the School Board's Chief of Facilities. The City shall visually inspect the Board Facilities prior to beginning its Training to ensure that there are no dangerous conditions in or around the Board Facilities. The City shall keep the Board Facilities and surrounding area clean and free of all waste, garbage and rubbish resulting from the City's use of the Board Facilities.

D. The City acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledges that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent acts or omissions of an employee, agent or invitee acting within the scope of their office or employment. The City agrees to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of its employees, agents and invitees, including third-party claims arising out of or as a result of the Training. The parties acknowledge that the foregoing shall not constitute an agreement by the City to indemnify the Board, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

E. Without waiving the right to sovereign immunity, the City represents and warrants that it is self-insured for commercial general liability and business automobile liability insurance in accordance with Florida Statute Section 768.28, as amended from time to time. Claims-bill tailored coverage shall not be considered third-party liability coverage for purposes of this Agreement. The City agrees to maintain or to be self-insured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. The City warrants and represents that all City employees participating in training are doing so in the scope and course of their employment. The City shall require that all City employees participating in the Training shall, prior to participating in the Training, sign a waiver of liability/assumption of risk/covenant not to bring suit in favor of the Board, in the substantially the form attached hereto as Exhibit "B". The City covenants not to threaten or bring suit against the Board and waives any right of subrogation for any personal injury resulting from the City's use of the Board Facilities. In the event of loss, damage or injury to the City's property, the City shall look solely to any insurance in its favor without making any claim against the Board. The City hereby waives any right of subrogation against the Board for loss, damage or injury within the scope of the City's insurance or self-insurance, and on behalf of itself and its insurer, waives all such claims against the Board. This provision shall survive the termination or expiration of this Agreement. This provision is a material inducement to the Board to enter into this Agreement. The City agrees to provide the Board with an affidavit or certificate of insurance evidencing insurance or self-insurance, which the Board agrees to recognize as acceptable for the above-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the City of its liability and obligations under this

Agreement. The City's Certificate of Insurance for Worker's Compensation coverage shall include a Waiver of Subrogation, WC 0003 13 or its equivalent.

F. In the event that any part of the School property is damaged by the City, its agents, employees or invitees, during the Training, the City shall promptly notify the Board in writing of the damage and shall reimburse the Board for the actual costs to repair the damage. Reimbursement shall be made within fifteen (15) days of a written request for reimbursement of costs.

G. At the conclusion of each Training, the City shall surrender the Board Facilities and shall cause to be removed from the Board Facilities all waste, garbage and rubbish resulting from the City's use of the Board Facilities.

H. The manufacture, distribution, dispensation, possession, consumption or use of alcohol, tobacco products of any kind (including electronic cigarettes or any kind) or controlled substances on School property is strictly prohibited and violation of this provision shall be a material breach of this Agreement.

I. The alternation or modification of the Board Facilities or construction of any improvements to the Board Facilities by the City is strictly prohibited.

4. Obligations of the Board.

The Board shall allow the City to conduct its Training in the Board Facilities and shall provide the City with access to the Board Facilities as approved by the Board's Chief of Police.

5. Acceptance of Board Facilities.

The Board shall not be required to make any improvements to the Board Facilities as a condition of the City's use. The City acknowledges and confirms that it has thoroughly inspected all relevant aspects the Board Facilities and evaluated its condition and its suitability for use in the Training. The City accepts the Board Facilities in its "AS IS, WHERE IS AND WITH ALL FAULTS" condition and assumes all risk associated with use of the Board Facilities for the Training. The City further acknowledges and confirms that the Board has made no warranties or representations to the City regarding the condition of the Board Facilities, including, but not limited to, any representations or warranties regarding the suitability of the Board Facilities for use by the City for the Training. The City shall regularly inspect the Board Facilities prior to use and notify the Board of any repairs or maintenance that is required to maintain the Board Facilities in good and safe condition.

6. License.

Notwithstanding any provision of this Agreement to the contrary, the use the Board Facilities by the City shall only amount to a license to use the Board Facilities, which license shall be revocable by the Board for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting the City any title, interest or estate in the Board Facilities.

7. Default.

The parties agree that, in the event that the City is in default of its obligations under this Agreement the Board shall provide the City notice of the default and thirty (30) days to cure such default. In the event that the City has not cured the default within thirty (30) days, the Board shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to immediately terminate this Agreement and seek damages, if any.

8. Termination.

Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party without cause upon thirty (30) days written notice to the other party.

9. Notice.

All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by United States Mail to the following:

IF TO CITY:

Neal de Jesus
Interim City Manager
100 NW 1st Ave.
Delray Beach, FL 33444

With Copy to:

Jeffrey Goldman
Chief of Police
300 W. Atlantic Ave.
Delray Beach, FL 33444

IF TO BOARD:

Chief of Police
3300 Forest Hill Blvd.
West Palm Beach> FL 33406

With Copies to:
Chief of Facilities
School Board of Palm Beach County
3318 Forest Hill Boulevard
West Palm Beach, Florida 33406-5813

General Counsel
P.O. Box 19239
West Palm Beach, FL 33416

10. Governing Law and Venue.

This Agreement shall be construed by and governed by the laws of the State of Florida. The parties agree that any controversies or legal disputes arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Fifteenth Judicial Circuit of Palm Beach County, Florida.

11. Equal Opportunity Provision.

The parties agree that no person shall, on the grounds of race, color, sex, gender, gender identity or expression, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

12. Captions.

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

13. Severability.

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

14. Entirety of Agreement.

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

15. Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

16. Amendment.

Except as otherwise provided for in this Agreement, this Agreement may be modified and amended only by written instrument executed by the parties hereto.

17. Waiver.

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

18. Construction.

Neither party shall be considered the author of this Agreement since the parties have participated in drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. It is the intent of the parties that the provisions of this Agreement be broadly interpreted to provide the maximum protection permitted by law, to the Board from and against all claims, actions, liabilities, losses (including economic losses), and costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from.

19. Filing.

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County pursuant to Section 163.01(11), Florida Statutes.

20. Effective Date/Term.

This Agreement shall become effective when signed by the both the parties, and filed with the Clerk of the Circuit Court in and for Palm Beach County. The term of this

Agreement shall be for a period of one (1) year, unless either party provides a written notice of intent to terminate the Agreement to the other party ninety (90) days in advance of the renewal date.

21. Survival.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, shall survive the execution and delivery of this Agreement and the consummation of the Training contemplated herein.

22. Jury Trial Waiver.

THE CITY AND BOARD HEREBY VOLUNTARILY WAIVE ANY RIGHT WHICH EITHER OR BOTH OF THEM HAVE OR MAY HAVE TO RECEIVE A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSIES OR DISPUTES WHICH MAY ARISE OUT OF THIS AGREEMENT OR WHICH MAY IN ANY WAY, DIRECTLY OR INDIRECTLY, BE CONNECTED WITH THE BOARD FACILITIES.

23. Assignment.

Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by the City without the prior written consent of the Board. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments.

24. Dispute Resolution.

In the event an issue arises which cannot be resolved between the parties regarding the use or availability of the Board Facilities, the dispute shall be referred to the Board's Chief of Police, and the City's Chief of Police or their respective designees, who shall all make a good faith effort to resolve the dispute.

25. Force Majeure.

No party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of any party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of any party be deemed Force Majeure.

26. Funding Out/Appropriation of Funds.

The performance by the parties of their obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by their respective governing bodies. Any party shall give notice to the other party of the non-availability of such funds when such party has knowledge.

27. Inspector General.

The City agrees and understands that the School Board's Office of Inspector General ("School Board's Inspector General") shall have access to all papers, books, records, documents, information, processes (including meetings), data and emails, with regard to this Agreement, to the extent such information is a public record and is not subject to an exemption ("Agreement Documents"). The City's employees, vendors, officers and agents shall furnish the School Board's Inspector General with requested information and Agreement Documents within their custody for the purposes of conducting an investigation or audit, as well as provide reasonable assistance to the School Board's Inspector General in locating assets and obtaining records and Agreement Documents as needed for investigation or audit relating to this Agreement, to the extent such information and Agreement Documents are a public record and is not subject to an exemption.

28. Records.

Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

29. Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

30. Jessica Lunsford Act.

All of City's employees who are permitted access to the Board Facilities when students are present must undergo level 2 screening. Level 2 screening consists of fingerprinting and a background check, as set forth in Section 1012.32, Florida Statutes. The City shall insure that all City's employees submit to a background check, including

fingerprinting by the School Board's Police Department, at the sole cost of the City. No employee of City shall be permitted access to the Board Facilities when students are present until he or she receives notice of clearance by the Board. Neither the Board, nor its members, officers, employees, nor agents, shall be liable under any legal theory for any claim whatsoever for the rejection of any employee of City (or discontinuation of the employee's services) on the basis of these compliance obligations. The City agrees that no employee of City who meets the above conditions and who has been convicted or who is currently under investigation for a crime delineated in Section 435.04, Florida Statutes, will be permitted access to the Board Facilities when students are present.

31. Liens.

Owner's interest in the Property shall not be subject to liens arising from City's use of the Board Facilities, or exercise of the rights granted hereunder. City shall promptly cause any lien imposed against the Board Facilities relating to this Agreement to be discharged or transferred to bond.

32. No Agency Relationship.

Neither party is an agent or servant of the other. No person employed by either party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law or otherwise, except through and against the party by whom they are employed.

33. No Third Party Beneficiaries.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day and year first above written.

ATTEST:

**CITY OF DELRAY BEACH, a Florida
municipal corporation**

By: _____
City Clerk

By: _____
Cary Glickstein, Mayor

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
R. Max Lohman, City Attorney

ATTEST:

**THE SCHOOL BOARD OF PALM
BEACH COUNTY, FLORIDA, a
corporate body politic**

By: _____
Robert M. Avossa, Ed.D., Superintendent

By: _____
Chuck Shaw, Chairman

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____
School Board Attorney

EXHIBIT "A"
DESCRIPTION FORMER PLUMOSA ELEMENTARY CAMPUS

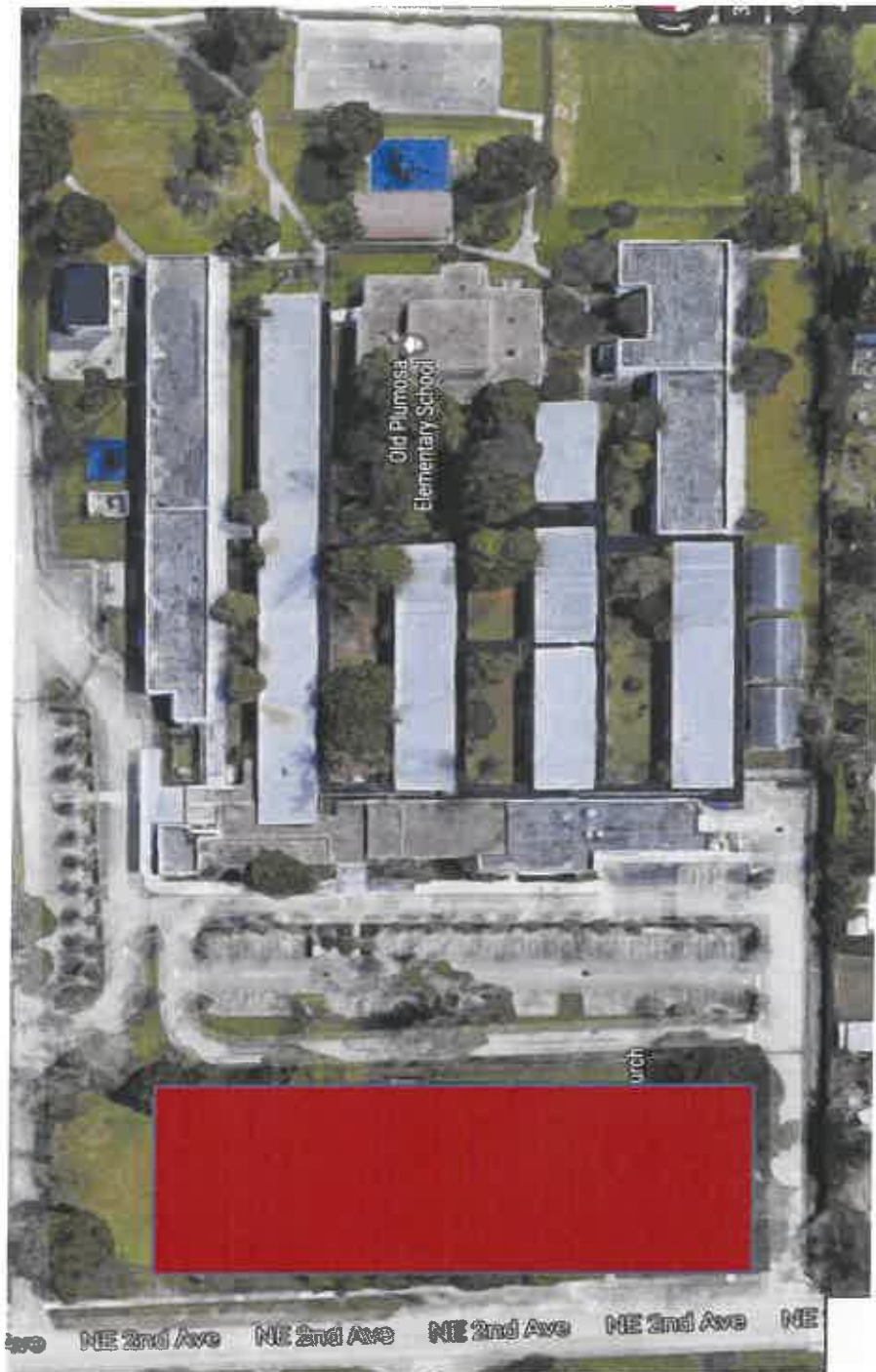


EXHIBIT "B"
WAIVER FORM



THE SCHOOL DISTRICT OF PALM BEACH COUNTY

Release/Waiver of Liability and Hold Harmless Agreement for an Adult

(Participant 18 Years of Age or Older)

Directions: Complete this form and return it to your school.

I _____, have been informed and know the risks involved in participating in this _____ event, and understand that serious injury, and even death, is possible in such participation and I choose to accept such risk. I voluntarily accept any and all responsibility for my own safety and welfare while participating in this event, with the full understanding of the risks involved. I hold harmless and release the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, ITS REPRESENTATIVES, MEMBERS, OFFICERS, EMPLOYEES, VOLUNTEERS, CONTRACTORS AND/OR AGENTS of any and all responsibility and liability for any injury or claim resulting from my participation in this event.

In consideration for being allowed to participate in the _____ event, I, for my heirs, executors and administrators, release and forever discharge the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, ITS REPRESENTATIVES, MEMBERS, OFFICERS, EMPLOYEES, VOLUNTEERS, CONTRACTORS AND/OR AGENTS of all liability, claims, actions, damages, and/or costs/expenses I may have against them, arising out of or in any way connected with my participation in this event on (date) _____. I understand that this release/waiver of liability applies to ANY claim, even those based upon the negligence, actions or inactions of those referenced above, including the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, ITS REPRESENTATIVES, MEMBERS, OFFICERS, EMPLOYEES, VOLUNTEERS, CONTRACTORS AND/OR AGENTS.

I HAVE READ THIS CAREFULLY, UNDERSTAND IT, AND KNOW IT CONTAINS A RELEASE/WAIVER OF LIABILITY.

Participant Signature

Date

Participant Print Name