

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF DELRAY BEACH
AND THE SCHOOL BOARD OF PALM BEACH COUNTY
FOR THE MUTUAL USE OF RECREATIONAL FACILITIES**

This Interlocal Agreement is made this _____ day of _____, 2017, between the City of Delray Beach, a municipal corporation of the State of Florida ("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 and Board recognize the benefits to be derived by utilizing each other's facilities thereby minimizing the duplication of facilities; and

WHEREAS, the City and Board desire the ability to use the facilities of the other; and

WHEREAS, the parties recognize that Atlantic High School and Carver Middle School specially benefit from the use of the facilities at the City-owned Robert P. Miller Park and the Delray Beach Community Center; and

WHEREAS, the parties recognize that the City specially benefits from the use of the facilities at Atlantic High School and Village Academy.

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.

The purpose of this Agreement is to enable the Board and City to utilize each other's recreational facilities and provide a procedure for authorizing the use of the Board's recreational facilities by City-affiliated recreation groups and organizations that have been approved by the parties.

3. Definitions.

A. "Board Facilities" and "Board Facility" mean facilities owned or operated by the Board that are made available for public use by the Board and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "Board Facilities" and "Board Facility" shall include gymnasiums, playgrounds, tennis, racquetball and basketball courts, athletic fields and tracks. The defined term "Board Facilities" does not include the Hilltopper Stadium, which is addressed by a separate lease agreement between the parties entitled Lease Agreement for the Use of School Facilities Between the City of Delray Beach and the School Board of Palm Beach County dated April 10, 2009 and the Amendment No.1 to the Lease Agreement dated August 5, 2011.

B. "City Facilities" and "City Facility" mean facilities owned or operated by the City that are made available for public use by the City and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "City Facilities" and "City Facility" shall include, parks, wrestling rooms, gymnasiums, pavilions, community centers, aquatic facilities, playgrounds, tennis, racquetball and basketball courts and athletic fields. The defined term "City Facilities" does not include the Seacrest Soccer Complex, which is addressed by a separate use agreement between the parties entitled Interlocal Agreement Between the School Board of Palm Beach County and the City of Delray Beach for the Purchase

and Construction of a Soccer Complex and Joint Use of Land and Facilities dated July 26, 2006 and Amendment No. 4 to the Interlocal Agreement dated August 5, 2011.

C. "City Manager" means the City Manager of the City of Delray Beach, Florida.

D. "Facilities" means the Board Facilities and City Facilities.

E. "Priority of Use" means the priority of uses when there are conflicting requests for the use of a Facility.

For Board Facilities, the Priority of Use shall be as follows:

1. Board activities and programs or Board Facility lease agreements; and

2. County activities and programs pursuant to the Interlocal Agreement entered into by the Board and Palm Beach County dated October 20, 2015. Should such a requested use in this category result in displacing a pre-existing City activity or program, such displacement shall be resolved by the Chief of Support Operations on behalf of the Board and the City Manager, or his or her designee, on behalf of the City. The Board shall use its best efforts to find an alternative appropriate Board Facility for the affected activity or program.

3. City or City Recognized Sports Provider activities and programs pursuant to this Agreement.

For City Facilities, the Priority of Use shall be as follows:

1. City or City recognized Sports Provider activities and programs or City facility rental agreements; and

2. Board activities and programs pursuant to this Agreement.

F. "Recognized Sports Provider" means an organized youth recreation group or organization identified in the attached Exhibit "C", which may be amended or supplemented from time to time upon the mutual written agreement of the Board's Chief of Operating Officer and the City Manager or his or her designee, without formal amendment hereto.

4. Use of Facilities by the Parties.

A. The Board agrees to make the Board Facilities available for use by the City according to the Priority of Use at no cost or expense to the City, except as otherwise provided for in this Agreement. The City's use of the Board Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement, including but not limited to Exhibit "B" which may be amended or supplemented from time to time upon the mutual written agreement of the Board's Chief of Operating Officer and the City Manager or his or her designee without formal amendment hereto; (ii) the Board's rules, regulations and policies governing the use of the Board Facilities; (iii) any grant or bond obligations pertaining to the use of any of the Board Facilities; and (iv) all applicable local, state and federal laws.

B. In addition to making the Board Facilities available as set forth in Paragraph 4.A. above, the Board agrees to make the Board Facilities at Atlantic High School and Village Academy available for use by the City according to the Priority of Use at no cost or expense to the City except as otherwise provided for in this Agreement. The City's use of the Board Facilities at Atlantic High School and Village Academy Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the Board's rules, regulations and policies governing the use of the Atlantic High School and Village Academy Facilities; (iii) any grant or bond obligations pertaining to the use of any of the Atlantic High School and Village Academy Facilities; and (iv) all applicable local, state and federal laws.

1. The Board Facilities at Atlantic High School shall be available as follows:

a. For the purpose of a youth summer basketball program sponsored and operated by the City that runs for approximately five (5) weeks in the summer from approximately June through mid-July. The Atlantic High School gymnasium shall be open from 7:30 am until 5:30 pm, Monday through Thursday. The Atlantic High School gymnasium may, at the request of the City, be open from 7:30 am until 5:30 pm on Fridays during the summer; however the City shall be responsible for the costs set forth below in Paragraph 4.D.

- b. For the purpose of a youth track and field program sponsored and operated by the City that runs for approximately twelve (12) weeks during the school year from approximately March through May. The Atlantic High School track and field shall be open from 6:00 pm until 7:30 pm, Tuesday and Thursday.
2. The Board Facilities at Village Academy shall be available as follows:
 - a. For the purpose of a youth basketball program sponsored and operated by the City that runs for approximately twelve (12) weeks during the school year from approximately January through March. The Village Academy gymnasium shall be open from 6:00 pm until 9:00 pm, Monday, Tuesday, and Wednesday and from 8:00 am until 4:00 pm on Saturday.

Staff costs and the other costs, including utilities, shall be calculated consistent with Board Policy 7.18 as mutually agreed by the Board's Chief of Operating Officer and the City Manager or his or her designee.

C. The City agrees to make available the City Facilities for use by the Board according to the Priority of Use at no cost or expense to the Board, except as otherwise provided for in this Agreement. The City is eligible to request use of the Board Facilities at the following public schools pursuant to this Agreement and the following public schools are eligible to request use of City Facilities pursuant to this Agreement:

- Atlantic Community High School
- Banyan Creek Elementary School
- Carver Community Middle School
- Delray Full Service Center
- Orchard View Elementary School
- Pine Grove Elementary School
- Plumosa School of the Arts
- S. D. Spady Elementary School
- Village Academy

The Board's use of the City Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the City's rules, regulations and policies governing the use of the City's Facilities; (iii) any grant or bond obligations pertaining to the use of any of the City Facilities; and (iv) all applicable local, state and federal laws.

D. The City and Board shall be responsible for paying the actual charges for necessary Facility staff and utilities if all or a portion of the Facility is scheduled to be closed or not normally staffed during the proposed use.

E. The City shall submit all requests for use of the Board Facilities in writing on the form attached hereto as Exhibit "B" to the Principal responsible for the management of the Board Facility or his or her designee no less than thirty (30) days prior to the date that the City desires to use the Board Facility. The Board shall be responsible for ensuring that a written response to the request is provided to the City within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response. The Board reserves the right to deny use of the Board Facility if that particular Board Facility has been selected to remain closed during the summer.

F. The Board shall submit all requests for use of the City Facilities in writing on the form attached hereto as Exhibit "B" to the City Manager or his or her designee, no less than thirty (30) days prior to the date that the Board desires to use the City Facility. The City shall be responsible for ensuring that a written response to the request is provided to the Board within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response.

G. Notwithstanding the requirements set forth in Paragraphs 4.E. and 4.F. above, in the event that a need to use a Facility arises less than thirty (30) days prior to the date the City or Board Facility is needed, the City or Board, as applicable, will use reasonable efforts to expedite the review of and accommodate such request to the extent practicable under the circumstances.

H. The Board and City acknowledge 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 acknowledge 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 or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The Board and City agree 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 their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, 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.

I. Without waiving the right to sovereign immunity, the parties acknowledge that they are self-insured for commercial general liability and automobile liability in the amounts specified in Florida Statutes Section 768.28, as may be amended from time to time. In the event either party maintains third-party commercial general liability or business automobile liability insurance in lieu of exclusive reliance on self-insurance, the party maintaining the third-party insurance shall maintain limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury or property damage and shall add the other party as an additional insured to the commercial general liability policy, but only with respect to negligence arising out of this Agreement that is not a result of the other party's negligence. The additional insured endorsement for the City shall read "the City of Delray Beach, Florida, its Officers, Employees and Agents". The additional insured endorsement for the Board shall read "The School Board of Palm Beach County, Florida, its Officers, Employees and Agents". The parties agree additional insured endorsements shall provide coverage on a primary basis. Claims-bill tailored coverage shall not be considered third-party liability coverage for purposes of this Agreement. The parties agree 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. Each party agrees to provide the other party with an affidavit or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the parties of their liability and obligations under this Agreement.

J. Each party agrees to provide adequate supervision of its own activities to prevent bodily harm to the users and damage to the Facilities, taking into consideration the types of activities planned, when using the other's Facilities. When aquatic facilities will be included in the Facilities to be utilized, the party using the Facility shall provide supervisors certified in Lifeguard Training in addition to any other supervision required hereunder. Notwithstanding the foregoing, the party using the City's aquatic facilities shall be required to use the City's lifeguards and will be responsible for the cost of the lifeguards for any use of the facility beyond its normal operating hours.

K. In the event the Facilities are damaged, the party using the Facilities of the other party shall promptly notify the other party in writing of the damage and shall reimburse the other party for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs.

L. The Facilities shall be surrendered by the party using the Facilities of the other party in the same condition as they were accepted and shall cause to be removed from the Facilities all waste, garbage and rubbish resulting from such party's use of the Facilities.

M. The Board acknowledges and agrees that the City may charge a fee for: (1) City lifeguards at the Aquatic Center in accordance with Paragraph 4.J.; (2) City staff when City Facilities are closed; (3) City staff for preparation of athletic Facilities for Board use, if field preparation is requested by the Board; and (4) Staff and utilities in accordance with Paragraph 4.D. of this Agreement.

N. The City acknowledges and agrees that the Board may charge a fee for: (1) Board staff when Board Facilities are closed; (2) Board staff for preparation of athletic Facilities for City use, if field preparation is requested by the City; and (3) Staff and utilities in accordance with Paragraph 4.D. of this Agreement.

O. The City may use a Board Facility or other Board-owned and controlled facility for a one-time City meeting or annual City-sponsored community event with prior written authorization from the Board's Area Superintendent and the Board's Chief Operating Officer, or designee, provided that the event benefits the community or student

population. Such events shall have the same priority as the City's other uses of the Board Facilities set forth in this Agreement.

P. The Board may use a City Facility or other City-owned and controlled facility for a one-time Board meeting or annual Board-sponsored community event with prior written authorization from the City's City Manager or designee, provided that the event benefits the community or student population. Such events shall have the same priority as the Board's other uses of the City Facilities set forth in this Agreement.

5. Use of Board Facilities by City Recognized Sports Providers.

A. The Board agrees to make the Board Facilities available for use by the City Recognized Sports Providers to the City Recognized Sports Providers according to the Priority of Use, except as otherwise provided for in this Agreement. The City Recognized Sports Provider shall be responsible for payment of any fees set forth in Paragraph 4.N above directly to the Board. Use of the Board Facilities by the City Recognized Sports Providers shall depend on availability and shall be subject to and in accordance with: (i) the terms and conditions of this Agreement including but not limited to Exhibit "B"; (ii) the Board's rules, regulations and policies governing the use of Board Facilities; (iii) any bond or grant obligations pertaining to the use of the Board Facilities; and (iv) all applicable local, state and federal laws.

B. Prior to being granted access to any of the Board Facilities, each City Recognized Sports Provider shall be required to obtain a Facility Use Permit from the City. The Facility Use Permit shall, at a minimum, require the City Recognized Sports Provider to:

1. Provide proof of insurance in the amounts listed below or as required by the Board's Director of Employee Benefits and Risk Management:

COMMERCIAL GENERAL LIABILITY: City Recognized Sports Provider shall procure and maintain, for the life of the contract, Commercial General Liability Insurance. This policy shall provide coverage for death, bodily injury, personal injury, products and completed operations liability and property damage that could arise directly or indirectly from the use of the Board Facilities. It must be an occurrence form policy. **THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA SHALL BE NAMED AS AN**

ADDITIONAL INSURED ON THE CERTIFICATE FOR COMMERCIAL GENERAL LIABILITY INSURANCE.

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined, Single Limit for Bodily Injury Liability and Property Damage Liability.

Required Endorsements:

- Additional Insured – CG 20 26 or CG 20 10 and CG 20 37 or their equivalents.

Note: CG 20 10 or CG 2026 must be accompanied by CG 20 37 to include products/completed operations.

- Waiver of Transfer Rights of Recovery – CG 24 04 or its equivalent.
- Primary and noncontributory – CG 2001 or its equivalent.

Note: If blanket endorsements are being submitted, please include the entire endorsement and applicable policy number.

WORKERS' COMPENSATION: City Recognized Sports Provider must comply with Section 440, Florida Statutes, Workers' Compensation and Employees' Liability Insurance with minimum statutory limits or elective exemptions as defined in Florida Statute 440 will be considered on a case by case basis.

Required Endorsements:

- Waiver of Subrogation – WC 0003 13 or its equivalent

(Required if employees provide work in conjunction with the facility use.)

BUSINESS AUTOMOBILE LIABILITY: City Recognized Sports Provider shall procure and maintain, for the life of the contract, Business Automobile Liability Insurance. **THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR BUSINESS AUTOMOBILE LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" form policy. The insurance must be an occurrence form policy.

In the event the City Recognized Sports Provider does not own any vehicles, the School District will accept hired and non-owned coverage in the amounts listed above. In addition, the School District will require an affidavit signed by the awarded proposer indicating the following:

_____ (Company Name) does not own any vehicles. In the event the company acquires any vehicles throughout the term of the contract, _____ (Company Name) agrees to purchase "Any Auto" coverage as of the date of acquisition.

Participant Accident Coverage

\$25,000

(Required if City Recognized Sports Provider utilizes Board facilities for any type of athletic activities. Examples are; team sports like soccer, football, tennis, tournaments, practice, swim and gymnastic meets, dance/cheer competitions, karate, dance recitals, and fitness class. This also includes games, camps or practice.)

In the event of loss, damage or injury to the City Recognized Sports Provider's property, the City Recognized Sports Provider shall look solely to any insurance in its favor without making any claim against the Board. The City shall require the Recognized Sports Provider to waive any right of subrogation against the Board, for loss, damage or injury within the scope of the City Recognized Sports Provider's insurance, and on behalf of itself and its insurer, waives all such claims against the Board;

2. Protect, defend, reimburse, indemnify and hold the Board, its agents, employees and elected officers harmless from and against all claims, liability, expenses, costs, damages and causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising from or in any way connected to the City Recognized Sports Provider's use of the Board Facilities;

3. Provide adequate supervision of its own activities to prevent bodily harm to the users or damage to the facilities, taking into consideration the types of activities planned;

4. Return the Board Facilities in the same condition as they were accepted and to remove all waste, garbage and rubbish resulting from the City Recognized Sports Provider's use of the Board Facilities;

5. Notify the Board of any damage to the Board Facilities resulting from the City Recognized Sports Provider's use of the Board Facilities and reimburse the Board for the actual costs to repair the damage; and

6. Notify the Board of any dangerous conditions existing on the Board's Facilities.

C. The Facility Use Permit issued by the City shall also indicate that the Facility Use Permit may be revoked or suspended by the City and the Board may deny access to the Board Facilities for failure to comply with the terms and conditions of the Facility Use Permit.

D. The City Recognized Sports Providers shall be required to submit all requests for use of the Board Facilities in writing in the form attached hereto as Exhibit "B" to the City Manager or his or her designee, no less than forty five (45) days prior to the date the City Recognized Sports Provider desires to use the Board Facility. The City Manager or his designee shall coordinate scheduling of the use of the Board Facility with the Principal responsible for the management of the Board Facility or his or her designee. The Board shall be responsible for ensuring that a written response to the request is provided to the City Manager or his or her designee within fifteen (15) days of the date of the City Manager's, or his or her designee's request. In the event a request is denied, the reason for denial shall be stated in the written response.

E. Notwithstanding any provision of this Agreement to the contrary, the Board shall not be obligated to make the Board Facilities available for use for summer camps, tournaments, travel team practices or games or any events where admission, vendor fees and or charges will be collected or imposed by the City or City Recognized Sports Provider. These events shall require the parties to enter into a lease for use of the Board Facility and the payment of all fees, all in accordance with Board Policy 7.18.

F. The City acknowledges and agrees the Board may charge a fee for use of the Board's swimming pool, which shall be consistent with Board policy 7.185.

6. Maintenance/Repair of Facilities.

The parties acknowledge and agree that either party may deny a request for use of a Facility to perform maintenance or repairs to the Facility.

7. Notification of Responsibilities under Agreement.

The Board agrees to notify the Board's Principals of the terms and conditions of this Agreement and the Board's commitment to make the Board Facilities available to the City and City Recognized Sports Providers in accordance with the Priority of Use.

8. Dispute Resolution.

In the event an issue arises which cannot be resolved between the Board's Principal and the City's Director, Parks and Recreation Department or his or her designee regarding the use or availability of a Facility, the dispute shall be referred to the Board's Chief Operating Officer and the City Manager who shall both make a good faith effort to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation before resorting to litigation.

9. Acceptance of Facilities.

Neither party shall be required to make any improvements or repairs to the Facilities as a condition of use of the Facilities by the other party or City Recognized Sports Providers. The parties and City Recognized Sports Providers shall accept the Facilities in their "As Is", "Where Is" condition. The parties acknowledge and agree that neither party has made any warranties or representations to the other party regarding the Facilities, including, but not limited to, any representations or warranties regarding the suitability of the Facilities for use by the other party or City Recognized Sports Providers.

10. License.

Notwithstanding any provision of this Agreement to the contrary, the use the Facilities by either of the parties or the City Recognized Sports Providers shall only amount to a license to use the Facilities on a non-exclusive basis, which license shall be revocable by the party licensing the use for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting either party or the City Recognized Sports Providers any title, interest or estate in the Facilities.

11. Default.

The parties agree that, in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure the

default within the thirty (30) day cure period, the non-defaulting party shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement and seek damages, if any.

12. Termination.

Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party: (i) without cause upon thirty (30) days prior written notice to the other party or (ii) with cause upon the expiration of the thirty (30) day cure period provided for in Paragraph 11 above.

13. Annual Appropriation.

Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.

14. 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:

City of Delray Beach
ATTN: City Manager
100 NW 1st Avenue
Delray Beach, Florida 33444

IF TO BOARD:

Director of Planning and Intergovernmental Relations
3300 Forest Hill Boulevard, Suite B-102
Delray Beach, FL 33406

15. 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. If any action at law or in equity is brought to

enforce or interpret the provisions of this Agreement, each party shall be responsible for their own attorney's fees and costs incurred.

16. Subordination to Bond and Grant Obligations

The parties acknowledge that certain Facilities may be subject to bond covenants and restrictions or grant obligations and agree that this Agreement shall be subject and subordinate to any such covenants, restrictions and obligations. Notwithstanding any provision of this Agreement to the contrary, the parties shall not be obligated to make any Facility available for use by the other party or City Recognized Sports Providers in a manner which either party has determined, in its sole discretion, would be contrary to any of its bond or grant obligations, including, but not limited to, making any of the Facilities available at no cost when such an action would be contrary to either party's bond or grant obligations.

17. Equal Opportunity Provision.

The parties agree that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender, gender identity or expression 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.

18. Captions.

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

19. 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.

20. 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.

21. Incorporation by Reference.

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

22. 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.

23. 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.

24. Construction.

Neither party shall be considered the author of this Agreement since the parties have participated in extensive negotiations and 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.

25. 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.

26. Effective Date/Term.

This Agreement shall become effective when signed by both 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 and shall be automatically renewed up to four (4) additional consecutive one (1) year terms, unless either party provides a written notice of intent to terminate the Agreement to the other party pursuant to Paragraph 14.

27. Prohibition Against Alcohol, Tobacco and Drones.

The manufacture, distribution, dispensation, possession, consumption or use of alcohol, tobacco products of any kind, e-cigarettes or controlled substances on City or School Board-owned property is strictly prohibited and violation of this provision shall be a material breach of this Agreement. No unmanned aerial vehicles of any kind, also known

as drones, shall be permitted on or about City or School Board-owned property. Violation of this provision by any person associated with a City Recognized Sports Provider shall be just cause for termination of the City Recognized Sports Provider's privilege to use any Board Facility in the future.

28. Inspector General.

The City agrees and understands that the School Board's Office of Inspector General ("School Board's Inspector General") shall have immediate, complete and unrestricted access to all papers, books, records, documents, information, personnel, processes (including meetings), data, computer hard drives, emails, instant messages, facilities or other assets owned, borrowed or used by the City with regard to this Agreement. The City employees, vendors, officers and agents shall furnish the School Board's Inspector General with requested information and records 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 documents as needed for investigation or audit relating to this Agreement. Furthermore, the City understands, acknowledges and agrees to abide by School Board Policy 1.092(4) (d).

29. No Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the City and/or Board.

30. Liens.

Each party's respective interest in the Facilities shall not be subject to liens arising from the others or the City Recognized Sports Provider's use of the Facilities, or exercise of the rights granted hereunder. Each party shall promptly cause any lien imposed against the Facility of the other party relating to the use of Facilities under this Agreement to be discharged or transferred to bond.

31. 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.

32. 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.

33. Survival.

Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive.

34. Waiver of Jury Trial.

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

35. 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.

(The remainder of this page is intentionally left blank.)

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

**CITY OF DELRAY BEACH,
FLORIDA**

**SCHOOL DISTRICT OF PALM BEACH
COUNTY, FLORIDA**

By: _____
Cary Glickstein, Mayor

By: _____
Chuck Shaw, Chairman

ATTEST:

ATTEST:

City Clerk

Robert M. Avossa, Ed.D., Superintendent

Date: _____

Date: _____

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

City Attorney

School Board Attorney

City Commission Meeting Date

School Board Meeting Date

EXHIBIT “A”

City Recognized Youth Sports Providers

**Delray Beach Athletic Club
Delray National Little League
Delray American Little League
Delray Rocks Youth Football**

**Soccer & Lacrosse
Baseball
Baseball
Tackle Football**

EXHIBIT "B"

THE CITY OF DELRAY BEACH AND THE SCHOOL BOARD OF PALM BEACH COUNTY

INTER-LOCAL FACILITY REQUEST FORM

_____ Date	_____ Contact Person	_____ School Name (if applicable)
_____ Phone Number	_____ Fax Number	_____ Other Contact Number
_____ Address	_____ City	_____ State/ZIP

FACILITY REQUEST:

Choice #1

Choice #2

Activity

Age Group

Estimated Attendance:

Participants: _____ Spectators: _____ Total: _____

Mark appropriate day(s) facility will be needed:

☐Monday ☐Tuesday ☐Wednesday ☐Thursday ☐Friday ☐Saturday ☐Sunday

Date(s): _____

Time(s): From: _____ **am/pm** **To:** _____ **am/pm**

☐New Request

☐Repeat Request:

Date and location of previous use: _____

Other pertinent information (as necessary): _____

☐ **Requesting Principal**

Date

☐ **Director of Recreation Services**

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☐ Approve ☐ Disapprove

Reason if disapproved: _____

☐ **Principal**

Date

☐ **Director of Recreation Services**

EXHIBIT “C”

School Board of Palm Beach County Standard Facility Operating Hours

The Board agrees to make the Board Facilities available for use by the City according to the Priority of Use, at no cost to the City and in accordance with the following maximum operational hours for indoor and outdoor Board Facilities

When School is in session:

Weekdays (Monday through Friday):	From the close of the school day until 9:30 pm
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Saturdays:	From 8:00 am to 9:30 pm
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Sundays:	From 8:00 am to 1:00 pm
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When School is out of session (Summer Break and Spring Break):

Weekdays (Monday through Thursday):	From 8:00 am until 9:30 pm
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Fridays, Saturdays, Sundays:	Closed
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School Holidays and Winter Break:

The Board Facilities will be closed the day of the school holiday plus any immediately preceding or following weekend days (i.e. the weekend preceding a Monday National Holiday or following Thanksgiving. The Board Facilities will also be closed for the entire Winter Break (traditionally beginning on the Saturday prior to Christmas and extending through the Sunday following New Year's).

The maximum operational hours may be amended from time to time upon the mutual agreement of the Board's Chief Operating Officer and City Manager or his or her designee. The maximum operational hours do not apply to outdoor facilities.