

**INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD
OF PALM BEACH COUNTY AND THE CITY OF DELRAY BEACH**

THIS AGREEMENT, entered into this ____ day of _____, 2021 , between the **SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**, a corporate body politic pursuant to the Constitution of the State of Florida, (hereinafter referred to as "**SCHOOL BOARD**") and the **CITY OF DELRAY BEACH**, a Florida municipal corporation, (hereinafter referred to as "**CITY**").

W I T N E S S E T H:

WHEREAS, it is the intent of the **SCHOOL BOARD** and the **CITY** to encourage and ensure cooperation between and among the local governmental entities to provide for the coordination of development activities of units of local government; and

WHEREAS, the **SCHOOL BOARD** is the controlling body of the School District of Palm Beach County, Florida, and owns and operates schools in the City of Delray Beach; and

WHEREAS, the **SCHOOL BOARD** and the **CITY** recognize the need, on occasion, to utilize the facilities of the other, thereby minimizing the duplication of facilities; and

WHEREAS, the **CITY'S** Police Department wishes to utilize the building and property located at 2350 N. Seacrest Boulevard, Delray Beach, Florida for law enforcement training in conjunction with the **SCHOOL BOARD'S** Police Department. The Seacrest Boulevard Facilities shall be hereinafter referred to as the "**FACILITIES**"; and

WHEREAS, the **SCHOOL BOARD** will own and operate the **FACILITIES**; and

WHEREAS, the **CITY** will share in the costs of improving the **FACILITIES**; and

WHEREAS, the **SCHOOL BOARD** will pay for the maintenance costs of the **FACILITIES**; and

WHEREAS, pursuant to the Palm Beach County Law Enforcement Mutual Aid Agreement dated February 1, 2009, law enforcement agencies are encouraged to share their **FACILITIES** and resources with each other.

NOW, THEREFORE, in consideration of the promises contained herein, the parties agree as follows:

I. GENERAL PROVISIONS

A. The above recitals are true and correct and are incorporated herein by reference.

B. **FACILITIES** shall mean the **SCHOOL BOARD**-owned property and buildings located at 2350 N. Seacrest Boulevard, Delray Beach, Florida. This facility includes but is not limited to: the building containing the Mat Room, Classrooms, Weight Room, Storage Room, Multi-Purpose Field and Parking Lot. The **CITY'S** Equipment shall include but not be limited to the following: the Use of Force and Judgment Simulator, all equipment in weight room, Office Furniture, Televisions, Computers and miscellaneous training equipment.

C. The **SCHOOL BOARD** agrees to make the **FACILITIES** accessible and available to the **CITY's** Police Department, seven days a week, twenty-four hours a day for law enforcement training.

D. Use of the **FACILITIES** will be coordinated between **CITY** and **SCHOOL BOARD** in accordance with Paragraph III of this Agreement. **SCHOOL BOARD** activities involving all or a portion of the **FACILITIES** shall have priority in the event of a conflict with **CITY** police training activities.

E. **CITY** warrants and represents that all individuals using the **FACILITIES** shall be **CITY** employees and his/her use of the **FACILITIES** is in the scope and course of his/her employment. **CITY** covenants not to threaten or bring suit against the **SCHOOL BOARD** and waives any right of subrogation for any personal injury resulting from the use of the **FACILITIES** by any **CITY** employee. In the event of loss, damage or injury to **CITY's** property, **CITY** shall look solely to any insurance in its favor without making any claim against **SCHOOL BOARD**. **CITY** hereby waives any right of subrogation against **SCHOOL BOARD** for loss, damage or injury within the scope of **CITY's** insurance or self-insurance, and on behalf of itself and its insurer, waives all such claims against **SCHOOL BOARD**. This provision shall survive the termination or expiration of this Agreement. This provision is a material inducement to the **SCHOOL BOARD** to enter into this Agreement.

II. OWNERSHIP

The **FACILITIES** shall remain in the ownership of the **SCHOOL BOARD**; and subject to all terms and conditions imposed thereby.

III. USE OF PROPERTIES

A. **Use of FACILITIES** – The **SCHOOL BOARD** agrees to permit the **CITY** in accordance with the prescribed procedure and conditions set forth herein, to utilize the

FACILITIES. The **CITY** shall maintain and upon request provide a calendar/monthly schedule of planned **CITY** police training activities involving all or a portion of the **FACILITIES** ("**CITY's** Use Schedule"). The School Board Police shall take priority for the classroom and mat room when a conflict arises. The **CITY's** use of the **FACILITIES** shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the **SCHOOL BOARD's** rules, regulations and policies governing the use of the **FACILITIES**, including but not limited to energy conservation, recycling and indoor air quality; (iii) any grant or bond obligations pertaining to the use of any of the **FACILITIES**; and (iv) all applicable local, state and federal laws. The **SCHOOL BOARD** agrees to coordinate with the **CITY** before using the **CITY's** Equipment and shall be liable for any damage to the **CITY's** Equipment caused by the **SCHOOL BOARD**, its employees, agents and invitees.

B. **Advanced Notice Regarding Use** – If a **SCHOOL BOARD** activity conflicts with a **CITY** police training activity on the **CITY's** Use Schedule, the **SCHOOL BOARD** agrees to provide reasonable notice to the **CITY's** Training Sergeant or Administrative Assistant of the conflict. Notice may be in the form of a schedule of activities, memorandum, or other written form, outlining the date, time and **FACILITIES**, or portion thereof that are needed.

C. **Adequate Supervision** – Both parties agree to provide adequate supervision at all times, taking into consideration the type of activities planned when using the **FACILITIES**.

D. **Manner of Use; Cleanup** – The **CITY** and the **SCHOOL BOARD** agree to utilize the **FACILITIES** and equipment in the manner, and to the extent and degree intended for the particular **FACILITY** or equipment in use and further agree to leave the **FACILITIES** and equipment in a clean and orderly condition upon leaving the **FACILITIES**.

E. COVID-19 NOTICE - The City represents and warrants that it shall be responsible for monitoring and complying with all CDC and OSHA regulations and guidance, and other federal, state and local regulations and guidance for responding to COVID-19 during the City's use of the Facilities. This includes, but is not limited to regulations and guidelines related to cleaning and disinfecting, promoting efforts that reduce the spread of COVID-19, providing healthy environments for all persons attending or participating in training events, protecting communal spaces and arranging for food service. The School Board shall not be responsible for any costs associated with the City's duty to comply with COVID-19 regulations and guidelines as mandated by the terms of this Agreement. The School Board shall not be responsible for monitoring or enforcing the City's compliance with CDC and OSHA regulations and guidance, and other federal, state and local regulations and guidance for responding to COVID-19. The City shall indemnify, defend and hold harmless the School Board for any claims, expenses, liabilities, losses or damages resulting from a failure to comply with CDC and OSHA regulations and guidance, and other federal, state and local regulations and guidance for responding to COVID-19 or as a result of a breach of the terms of this Agreement.

F. **Damage to FACILITIES When in Use Pursuant to this Agreement** – The **CITY** agrees to be responsible for damage caused by the **CITY**, its employees, agents and invitees and for any vandalism occurring to the **FACILITIES** during the periods the **FACILITIES** are used by the **CITY**. The **SCHOOL BOARD** agrees to be responsible for damage caused by the **SCHOOL BOARD**, its employees, agents and invitees and for any vandalism occurring to the **FACILITIES** during the periods the **FACILITIES** are used by the **SCHOOL BOARD**. In the event that damage due to vandalism occurs when both parties are using the **FACILITIES**, the **SCHOOL BOARD** agrees to be solely responsible for the damage caused by such vandalism. Notwithstanding the responsibility of either party for damage sustained to the **FACILITIES**, the **SCHOOL BOARD** shall cause such repairs to be made as necessary to correct the damage and, in the event the **CITY** is responsible for some or all of the damage, submit an itemized invoice to the **CITY**. The **CITY** shall pay all such invoices within ninety (90) days of receipt of the invoice.

IV. **MAINTENANCE AND UTILITIES**

The maintenance responsibilities and utilities for the **FACILITIES** described herein shall be assumed as follows:

A. **SCHOOL BOARD** agrees to provide and assume 100% of costs of utilities and assume 100% of the costs of maintenance and maintain the **FACILITIES** as a current **SCHOOL BOARD** Ancillary Building including but not limited to:

1. Routine maintenance and repair as needed.
2. Maintenance and repair of the HVAC (heating, ventilation, and air conditioning), plumbing, locks, ice machine repair, electrical and alarms systems.

3. Maintenance and painting of existing buildings.
4. Providing landscape maintenance, custodial services and supplies, water, and electric to **FACILITIES**.

B. **CITY** agrees to provide cable and phone services to its own offices located at **FACILITIES** as well as waste service for **FACILITIES**.

V. FUTURE IMPROVEMENTS

All future improvements to the **FACILITIES** funded in whole or in part by the **CITY** shall be subject to prior review and approval of all plans by the **SCHOOL BOARD's** Chief Operating Officer ("COO"). Future improvements may include but not be limited to the following: driving pad and obstacle course. Construction costs of any future improvements funded in whole or part by the **CITY** shall be negotiated between the parties and subject to approval by the **CITY** and **SCHOOL BOARD** and subject to the issuance of all necessary permits by the School Board Building Department. Failure to fund any future improvements to the **FACILITIES** by the **CITY** shall not constitute a breach of this Agreement. Nothing in this Agreement shall be interpreted as prohibiting the **SCHOOL BOARD** from making improvements and modifications to the **FACILITIES** that are funded by the **SCHOOL BOARD**.

VI. SITE SECURITY

Both parties agree to properly secure the **FACILITIES** after each use. The **SCHOOL BOARD** shall provide monitoring of **FACILITIES** with cameras and an alarm system.

VII. INDEMNIFICATION AND LIABILITY

Each party shall be liable for its own actions and negligence and, to the extent permitted by law, **SCHOOL BOARD** shall indemnify, defend and hold harmless **CITY** against any actions, claims or damages arising out of **SCHOOL BOARD**'s negligence in connection with this Agreement, and **CITY** shall indemnify, defend and hold harmless **SCHOOL BOARD** against any actions, claims, or damages arising out of **CITY**'s negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes or any rights or defenses either party may have, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

VIII. MODIFICATION

Any modifications to this Agreement shall be in writing and approved by the parties' respective governing bodies.

IX. TERM.

A. This Agreement shall become effective upon approval of both parties, and shall continue for ten (10) years.

B. At the expiration and/or early termination of this Agreement, the **CITY** shall have the right, but not the obligation, to remove the Judgment Training and/or any other removable fixtures and/or equipment installed by **CITY**. All permanent improvements shall remain at the **FACILITIES**.

X. INSURANCE

CITY's contractors and subcontractors shall, at their sole expense, maintain in full force and effect at all times during the life of this Lease, insurance coverages, limits, including endorsements, as described in the Lease. The requirements contained herein, as well as School Board's review or acceptance of insurance maintained by the **CITY** and its contractors and subcontractors, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by **CITY** under the Lease.

Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, **CITY** acknowledges to be self-insured for General Liability, Automobile Liability and Professional Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event **CITY** maintains third-party Commercial General Liability, Business Auto Liability and Professional Liability in lieu of exclusive reliance of self-insurance under Section 768.28, Florida Statutes, **CITY** shall agree to maintain said insurance policies at limits not less than \$1,000,000 combined single limit for bodily injury or property damage. **CITY** agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. **CITY** and its insurance companies waive all rights against SCHOOL BOARD and its agents, officers, directors and employees for recovery of claims for bodily injury to the extent these injuries are covered by the Workers' Compensation and Employers' Liability Insurance.

When requested, **CITY** shall agree to provide a Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which **SCHOOL BOARD** agrees to recognize as acceptable for the above mentioned coverages.

Compliance with the foregoing requirements shall not relieve **CITY** of its liability and obligations under this Agreement.

At all times during the term of this Lease and any extensions thereto, **CITY's** contractors and its subcontractors performing any work or making improvements to the **FACILITIES** will be required to carry insurance as stated below. The **CITY's** contractors and subcontractors shall name The School Board of Palm Beach County as an Additional Insured. **CITY** shall provide the Certificate(s) of Insurance for required coverage not later than seven days prior to the commencement of any work or improvements to the **FACILITIES** to the School Board's Risk and Benefits Management Department. In no event shall the limits of said insurance policies be considered as limiting the liability of **CITY's** contractors or subcontractors under this Agreement.

a. Workers' Compensation - insurance coverage in accordance to and in compliance with Chapter 440, Florida Statutes.

b. Employers' Liability – insurance coverage with limits as follows:

\$ 500,000 Bodily Injury by Accident for each accident

\$ 500,000 Bodily Injury by Disease, policy limit

\$ 500,000 Bodily Injury by Disease, each employee.

CITY's contractors and subcontractors and their insurance companies waive all rights against **SCHOOL BOARD** and its agents, officers, directors and employees for

recovery of claims for bodily injury to the extent these injuries are covered by the Workers' Compensation and Employers' Liability Insurance.

c. Business Automobile liability shall be required with limits of at least; One Million Dollars (\$1,000,000.00) per occurrence for both bodily injury and property damage Combined Single Limit for owned, hired and non-owned automobiles, with the **CITY's** contractors and subcontractors naming The School Board of Palm Beach County as an Additional Insured on the policy. Business auto coverage shall be written on the most recent form of ISO form CA 00 01 or a substitute providing equivalent liability coverage. **CITY's** contractors and subcontractors and their insurance companies waive all rights against **SCHOOL BOARD** and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto insurance maintained.

d. Commercial General Liability Insurance – **CITY's** contractors and subcontractors shall purchase and maintain commercial general liability (CGL) insurance including contractual liability and products and completed operations insurance and shall be written on the most recent form of CG 00 01. The **CITY's** contractors and subcontractors shall name The School Board of Palm Beach County as an Additional Insured under the CGL using ISO Additional Insured Endorsement CG 20 10 and CG 20 37 or their equivalent, providing additional insured coverage for both premises/operations and completed operations. This insurance including insurance provided under a commercial umbrella, if any, shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to or maintained by **SCHOOL BOARD**.

Coverage shall be for bodily and personal injury and property damages. Limits of liability shall be set at One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000) aggregate. CGL insurance shall contain a general aggregate limit. **CITY's** contractors and subcontractors and their respective insurance companies, waive all rights against **SCHOOL BOARD** and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the CGL insurance maintained.

e. Waiver of Subrogation – **CITY** warrants and represents that it will include a provision in all contracts with the **CITY's** contractors performing any work or making improvements to the **FACILITIES** requiring **CITY's** contractors and subcontractors and their insurance companies waive all rights against the **SCHOOL BOARD** and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by any insurance maintained. In the event of personal injury or loss, damage or injury to the **CITY's** contractors' or subcontractors' property, the **CITY's** contractors and subcontractors shall be required to look solely to any and all insurance in its favor without making any claim against the **SCHOOL BOARD**. The **CITY's** contractors and subcontractors shall also be required to waive any right of subrogation against the **SCHOOL BOARD** for loss, damage or injury within the scope of the **CITY's** contractors' or subcontractors' insurance, and on behalf of itself and its insurer, waive all such claims against the **SCHOOL BOARD**.

XI. NOTICE. All notices herein required, permitted to be given to or served upon either party shall be in writing. Any such notice shall be deemed sufficiently given or served, if served personally, sent certified mail by the United States Mail or by any nationally

recognized overnight carrier to the **SCHOOL BOARD** or the **CITY** at the addresses set forth as follows:

As to the School Board: Chief of School Police
3300 Forest Hill Boulevard, B-101
West Palm Beach, FL 33406

With Copies to: Chief Operating Officer
3300 Forest Hill Boulevard, B-302
West Palm Beach, FL 33406

SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
General Counsel's Office
3300 Forest Hill Boulevard, Suite C-331
West Palm Beach, FL 33406

As to the City: Javaro Sims, Chief of Police
Delray Beach Police Department
300 W. Atlantic Avenue
Delray Beach, FL 33444

With Copies to: Jennifer Alvarez, Interim City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444

CITY OF DELRAY BEACH
Lynn Gelin, City Attorney
200 N.W. 1st Avenue
Delray Beach, Florida 33444

XII. SEVERABILITY. If any term or provision of this Agreement shall, to any extent, be deemed invalid or unenforceable, the remainder of this Agreement shall be valid and shall be enforced to the fullest extent of the law.

XIII. ENTIRE AGREEMENT. This Agreement together with any addendum(s) that may now or in the future be attached and become a part of this Agreement set forth all covenants, promises, agreements, conditions and understanding between the parties hereto. There are no covenants, promises, agreements, conditions and understandings, either oral or written, between the parties other than those herein set forth. Except as herein provided, no subsequent alteration, changes, or additions, shall be binding the parties, unless and until reduced to writing and signed by both parties.

XIV. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of Florida.

XV. NOT TO BE CONSTRUED AGAINST THE DRAFTER. This Agreement shall not be construed against the party who drafted the same as both parties have had experts of their choosing review the adequacy of the same.

XVI. VENUE. Should any litigation arise under this Agreement venue shall lie in Palm Beach County, Florida.

XVII. NO THIRD PARTY BENEFICIARIES. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

XIII. DISPUTE RESOLUTION. In the event an issue arises which cannot be resolved between the COO and the **CITY's** City Manager regarding the interpretation or operation

of this Agreement, the dispute shall be referred to the **SCHOOL BOARD's** Chief Operating Officer and the **CITY's** City Manager who shall both make a good faith effort to resolve the dispute before instituting any litigation.

XIX. NO ASSIGNMENT. Neither this Agreement nor any right to use the **FACILITIES** may be granted, assigned or transferred by **CITY**.

XX. COMPLIANCE WITH LAWS. **CITY** shall comply with all applicable federal and state laws, codes, rules and regulations, including applicable **SCHOOL BOARD** Policies, in performing its duties, responsibilities and obligations pursuant to this Agreement.

XXI. EQUAL OPPORTUNITY PROVISION. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital 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.

XXII. FILING. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

XXIII. FORCE MAJEURE. If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, acts of terrorism, medical conditions, which result in quarantine or similar limitations or restrictions on travel or congregation or by any law, order, proclamation, regulation, ordinance of any governmental agency (whether federal, state, local or foreign) the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, provided that

the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

XXIV. 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.

XXV. 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..

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

XXVII. TERMINATION. This Agreement may be canceled with or without cause by any party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of matters which occurred prior to termination.

XVIII. 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.

Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

XXIX. 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 **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 **SCHOOL BOARD**-owned property. Violation of this provision by any **CITY** employee shall be just cause for termination of this Agreement.

(The remainder of this Agreement has been left intentionally blank)

IN WITNESS WHEREOF, this Agreement has been executed by the parties herein
on the day and year first above written.

<p>CITY OF DELRAY BEACH, FLORIDA</p> <p>By: _____ Shelly Petrolia, Mayor</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____</p> <p>Katerri Johnson, City Clerk</p> <p>APPROVED FOR FORM AND LEGAL SUFFICIENCY:</p> <p>_____</p> <p>Lynn Gelin, City Attorney</p>	<p>SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA</p> <p>By: _____ Frank A. Barbieri, Jr., Esq., Chairman</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____</p> <p>Donald E. Fennoy II, Ed. D., Superintendent</p> <p>APPROVED AS TO FORM AND LEGAL SUFFICIENCY</p> <p>_____</p> <p>Blair Little John, School Board Attorney</p>
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