

AGREEMENT FOR USE OF FACILITIES

THIS AGREEMENT FOR USE OF FACILITIES (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS (“County”), and the SCHOOL BOARD OF INDIAN RIVER COUNTY (“School Board”).

W I T N E S S E T H:

WHEREAS, the County, on behalf of the Indian River County Parks and Recreation Department (the “Recreation Department”), and School Board desire to enter into this Agreement for School Board’s use of certain County facilities and County’s use of certain School Board facilities; and

WHEREAS, the County and School Board find that such an arrangement as set out herein is mutually beneficial.

NOW, THEREFORE, in consideration of the mutual covenants and provisions hereof, and other good and valuable consideration, the receipt and sufficiency all of which are hereby acknowledged, the parties desire to be legally bound by the terms and conditions of this Agreement as follows:

1. **Recitals**. The foregoing recitals are hereby incorporated herein in their entirety by this reference.

2. **Use of County Facilities**. County shall allow the School Board to use the following:

- 2.1. The competition pool at North County Aquatic Center located at 9450 County Road 512, Sebastian, Florida 32958, for use for swimming practices and swimming meets.
- 2.2. The baseball fields and softball fields at Commissioner Fran B. Adams Park (formerly North County Park) located at 9450 County Road 512, Sebastian, Florida 32958, for use for baseball and softball practices and games.
- 2.3. The competition pool, baseball fields, and softball fields shall collectively be referred to herein as the “County Facilities.”
- 2.4. County and School Board acknowledge that School Board will have priority use of the County Facilities during the school year. County and School Board also acknowledge that any requests made by School Board for use of the County Facilities submitted during the school year will be scheduled by County on an as-available basis.

3. Use of School Board Facilities. School Board shall allow the County to use the following:

- 3.1. Gymnasium facilities at Sebastian High School located at 9001 Shark Boulevard, Sebastian, Florida 32958 for use for recreation programs.
- 3.2. Gymnasium facilities at Sebastian River Middle School located at 9400 CR 512, Sebastian, Florida 32958 for use for recreational programs.
- 3.3. Gymnasium facilities at Oslo Middle School located at 480 20th Ave SW, Vero Beach, Florida 32962 for use for recreational programs.
- 3.4. The gymnasiums shall collectively be referred to herein as the “School Board Facilities.”
- 3.5. County and School Board acknowledge that County will have priority use of the County Facilities during the County recreational program seasons. County and School Board also acknowledge that any requests made by County for use of the School Board Facilities submitted during the recreational program season will be scheduled by School Board on an as-available basis.

4. Cost of Rental. If and as availability allows, School Board will be permitted the use of the County Facilities and the County will be permitted the use of the School Board Facilities listed above during the school year and recreational program season, respectively, at no rental charge. School Board shall pay County a \$20 per hour lighting fee for evening use of County Facilities, which shall be due thirty days after use of the County Facility. Use of other County Facilities such as the Indian River County Intergenerational Recreation Center and the Indian River County Fairgrounds, will be subject to normal rental rates and reservation rules.

5. School Board Responsibilities.

- 5.1. School Board shall repair any damage to County Facilities and any County equipment used by School Board, other than normal wear and tear, that is incurred as a result of such use.
- 5.2. School Board shall provide any and all additional services and equipment necessary for its use of the County Facilities.
- 5.3. School Board shall be responsible for providing qualified supervision of all activities by acting in capacity as School Board employees.
- 5.4. School Board shall, at its own expense, obtain all necessary permits and licenses and pay all fees and taxes required to comply with all local ordinances and state and federal law, rules, and regulations applicable to its use of the County Facilities.

6. County Responsibilities.

- 6.1. County shall repair any damage to School Board Facilities and any School Board equipment used by County, other than normal wear and tear, that is incurred as a result of such use.
- 6.2. County shall provide any and all additional services and equipment necessary for its use of the School Board Facilities.
- 6.3. County shall be responsible for providing qualified supervision of all activities by acting in capacity as County Parks and Recreation employees.
- 6.4. County shall, at its own expense, obtain all necessary permits and licenses and pay all fees and taxes required to comply with all local ordinances and state and federal law, rules, and regulations applicable to its use of the School Board Facilities.

7. **Term.** This Agreement shall be effective _____, 2021 and shall continue for a period of three (3) years, through _____, 2024. This Agreement may be extended by mutual agreement of the parties.

8. **Termination.** School Board and County reserve the right to terminate this Agreement at any time and for any reason, upon 90 days' prior written notice to the other party.

9. **Insurance.** [County's insurance requirements/language from Risk Management].

9.1. Commercial Insurance Program

The School Board shall provide, prior to execution of the contract, the insurance required under this section for approval by the County. The School Board's insurance shall be primary and The County shall be named as an additional insured for both General Liability and Automobile Liability. The School Board shall maintain the following limits of insurance during the term duration of this agreement.

General Liability

Each Occurrence \$1,000,000
Property Damage-any one fire \$50,000
Medical Expenses-any one person \$5,000
Personal and Advertising Injury \$500,000
General Aggregate \$2,000,000

Automobile Liability

Combined Single Limit \$1,000,000
Worker's Compensation as required by the State of Florida
Each accident \$100,000
Each Disease – Each employee \$100,000

Each disease – policy limit \$500,000

The Worker's Compensation policy shall cover The School Board, all employees, volunteers, and/or contractual persons hired or retained by The School Board.

All insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida. The insurance policies procured shall be "Claims Made" policies or as generally available on the open insurance market. The Insurance Carriers shall supply Certificates of Insurance evidencing such coverage to the Indian River County Risk Management Department prior to the execution of this Agreement, and shall provide 30 days written notice to the Indian River County Department of Risk Management of its intent to cancel, terminate or revise coverage.

9.2. Self-Insured Program

The Board may satisfy the insurance obligations hereunder by a combination of commercial insurance, formal risk pooling under the statutory provisions of the State, and/or a self-funded loss reserve in whatever proportions are deemed appropriate by the Board. The Board shall furnish the County with a certificate or other written evidence of the Board's election to provide or cause to be provided all or part of its coverage under a risk pooling, risk retention, or self-insurance program or any combination thereof. The Board must also provide the County with evidence that The Board's self-insured program has been approved by the State of Florida in accordance with Section 324.171.

10. Primary Points of Contact, Conflict Resolution. The primary point of contact for communications shall be for County, the Indian River County Director of the Parks and Recreation Department, or designee, and for School Board Director of Advocacy, Athletics and Student Activities, or designee. The primary points of contact will be responsible for providing the other party's primary point of contact with the schedules of the use of the other party's facilities provided in section 2 and 3 above, 90 days prior to the beginning of any recreational program season or school year. The primary points of contact shall also meet, at a minimum of once per quarter, to coordinate on schedules. The parties agree that before resorting to any dispute resolution or legal action, the primary points of contact will make best efforts to resolve any issues or disputes.

11. Force Majeure/Emergency. Any non-performance of the terms or conditions of this Agreement caused by or resulting from an event of Force Majeure (as defined below) shall not constitute a violation or event of default under this Agreement. For the purposes of this Agreement, the term "Force Majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, explosions, insurrections, riots, epidemics,

landslides, lightening, earthquakes, fires, hurricanes, tropical storms, floods, tornadoes, restraints of governments, civil disturbances, unavoidable breakage of machinery or equipment, enactment of applicable laws prohibiting performance, and other such causes not within the reasonable control of the party claiming the occurrence of an event of Force Majeure.

12. Cancellation of Use of Facilities. In the event, either party wishes to cancel the use of a facility, the party must provide 72 hours' notice to the other party's primary point of contact.

13. Indemnification. Each party shall indemnify and hold harmless the other party, its agents, officials, and employees from and against all claims, liabilities, losses, damages, personal injuries, or other causes of action which may arise from any misconduct, negligent act, or omissions of such indemnifying party or any of its respective agents, officers, or employees in connection with the performance of this Agreement. Such indemnification and hold harmless shall be only to the extent allowed by and within the limits of liability provided by section 768.28, Florida Statutes, and shall not otherwise be deemed a waiver of sovereign immunity of either party.

14. Assignment. This Agreement shall not be assigned by any party without the prior written consent of all of the parties hereto.

15. Modification. Modifications of this Agreement shall only be made in writing signed by both parties.

16. Severability. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

17. Notices. Any notice, request, instruction, or other document to be given as part of this Agreement shall be in writing and shall be deemed given under the following circumstances: when delivered in person; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall have given written notice as provided herein):

For County:

County Administrator
1801 27th Street
Vero Beach, Florida 32960

For School Board:

Superintendent
6500 57th Street
Vero Beach, Florida 32967

18. Governing Law. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

SCHOOL BOARD OF INDIAN RIVER COUNTY

Brian M. Barefoot, Chairman
Date: _____

Attest:

Dr. David Moore, Superintendent
Date: _____

INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Joseph E. Flescher, Chairman

Date approved: _____

Attest: Jeffrey R. Smith, Clerk of Court and Comptroller

By: _____
Deputy Clerk

Approved:

Jason E. Brown, County Administrator

Approved as to form and legal sufficiency

Dylan Reingold, County Attorney