

**Facility License Agreement**

**THIS AGREEMENT FOR USE OF FACILITIES** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS (“County”), and the Vero Beach Foundation Indians Football and Cheer Corporation, a Florida not for profit corporation (“Foundation”).

**Witnesseth That:**

WHEREAS, the County is the owner of a 39-acre parcel of land commonly known as the Victor Hart Sr. Community Enhancement Complex (“VHSCEC”), located at 4715 43rd Avenue, Vero Beach, Florida; and

WHEREAS, VHSCEC consists of two baseball fields (the Jackie Robinson Field and the Ralph Jay Lundy Senior Field), a football field (Wilson-Chisholm), a basketball court, a children's park with play equipment, restroom facilities, tennis wall and courts, covered pavilions and a fitness trail, fencing, parking, concession activities stand, press boxes and announcers’ booths; and

WHEREAS, the Foundation is a 501(c)(3) non-profit corporation organized under the laws of Florida. The Foundation is formed to develop, promote and foster sports talent for individuals by organizing local youth football and cheerleading; and

WHEREAS, the Foundation has a present need to use Wilson-Chisholm Field and the restrooms (together hereinafter the “Premises”) for their home game field to facilitate their football program; and

WHEREAS, the County believes that granting a license for the use of Premises to the Foundation for five (5) years would be in the public interest by providing a valuable amenity for the recreational enjoyment of football enthusiasts in the Gifford Community as well as in Indian River County; and

WHEREAS, the County and the Foundation understand that the initial obligations set forth in this Agreement reflect the current nature of the Foundation's limited financial capabilities and that both parties intend that these obligations and responsibilities will be reevaluated over time,

NOW, THEREFORE, for in consideration of the license for the Premises and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties agree as follows:

**Section 1 – Adoption of "Whereas" Clauses.**

**1.01 Incorporation of Recitals:** The above recitals are true and correct and are incorporated herein.

## **Section 2 – The License Agreement**

2.01 Duration: The County shall permit the use of the Premises to the Foundation for the term of five (5) years at the rate of one dollar (\$1.00) a year. The Agreement shall begin the day approved by the Board of County Commissioners and end five (5) years thereafter with an option to renew once for another five (5) years upon mutual agreement of both parties. If the County and the Foundation agree to extend the Agreement, the Foundation's obligations will be reevaluated by the County and the Foundation.

2.02 Contact Persons: The initial contact person for the Foundation shall be the Foundation's President, Calvin Moment, whose address is 8526 105<sup>th</sup> Ave, Vero Beach, Florida, 32967 (hereinafter "Foundation's Representative"). The contact person for the County shall be the County's Recreation Program Manager, whose address is the iG Intergenerational Center located at 1590 9<sup>th</sup> Street SW, Vero Beach, Florida 32962(hereinafter "Manager"). Parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the Foundation's Representative and the Manager for attempted resolution. The Foundation's Representative and the Manager shall be responsible for overall coordination and oversight relating to the performance of this Agreement. The Foundation and the County will provide updated contact information, if necessary, to the other party on or before the annual anniversary date of this Agreement.

## **Section 3 – The Premises**

3.01 The Premises: The Premises are located in an area commonly known as the Wilson/Chisholm Football Fields located within the VHSCEC. The Agreement does not include any other areas of VHSCEC with the exception of limited use of Lundy Field as set forth in Section 5.

3.02 Foundation's Use of The Premises: The Premises shall be used by the Foundation for the purpose of developing, promoting, and fostering sports talent by organizing local and statewide youth, football competitions as well as cheerleading competitions. This includes the Foundation's Board of Directors meetings, player registration, concession stand activities, football games, and practices. Concession stand activities as used herein shall only include the sale of regularly distributed non-alcoholic beverages and snacks. Any license for the operation of concessions shall be the responsibility of the Foundation. The Foundation may also conduct fundraising activities on the Premises subject to notifying the Manager thirty (30) calendar days in advance of the activity. The Foundation shall obtain any and all necessary licenses, approvals, or permits required for any use of the Premises. No other use is authorized without the written approval of the Manager.

3.03 Required Documentation to Use the Premises: The Foundation shall provide the Manager with the following information within five (5) days of signing this Agreement, and no later than May 15th of each subsequent year, unless otherwise provided in this Agreement:

- a) Names and contact information for the Foundation Board of Directors as well as the name and contact information for the Foundation's Representative pursuant to Section 2.02;

- b) Confirmation of continued active status as a non-profit organization in the State of Florida;
- c) Proof of insurance identified in Section 12 of this Agreement;
- d) A sworn, notarized statement regarding background screening of coaches and assistant coaches per subsection 6.04 of this Agreement; and
- e) A schedule of Foundation events, including fundraising activities, practices, and games for purposes of scheduling maintenance of the fields by July 1<sup>st</sup> of each year. Changes to the schedule shall be submitted to the Manager at least 72 hours in advance.

#### **Section 4 – The Wilson-Chisholm Field**

4.01 Exclusive Use of the Wilson-Chisholm Field: The County grants unto the Foundation the exclusive right to use on a year-round basis for purposes of conducting Foundation practices and games. The Foundation shall deliver to the County a list of its scheduled games in accordance with subsection 3.03. Subject to availability and without causing undue interference with regular activities and events previously scheduled by the Foundation, the County reserves the right to utilize the Wilson-Chisholm Field for games or special events at no charge to the County. The County agrees to provide a two (2) week notice to the Foundation of the time and date it intends on using the Wilson-Chisholm Field.

4.02 Foundation's Control of the Wilson-Chisholm Field: The Foundation will have control over the Wilson-Chisholm Field during the season to conduct games, practices, and events. Control does not include denying the County access to the Wilson-Chisholm Field for inspection or otherwise. Both the Foundation and the County will have keys to unlock the gates and access the Wilson-Chisholm Field.

#### **Section 5 – The Lundy Field**

5.01 Non-Exclusive Use and Control of the Lundy Field: The County grants unto the Foundation the non-exclusive right to use the Lundy Field from May 1<sup>st</sup> to November 1<sup>st</sup> of any given year (hereinafter "Primary Season") subject to County approval upon request by the Foundation. The Foundation shall deliver to the County a list of its proposed practices in accordance with subsection 3.03. At any time, the Lundy Field is not being used by the Foundation, it may be used by another sports group for compatible use (football, baseball, etc.). Both the Foundation and the County will have keys to unlock the gates and access the Lundy Field.

#### **Section 6 – The Foundation's Initial Obligations and Responsibilities**

6.01 General Obligations: The Foundation agrees to:

- a) Not charge admission to any game or event under this Agreement;
- b) Not sell, give, permit or otherwise distribute any alcoholic beverages or tobacco products on the Premises or at VHSCEC;
- c) Use the Premises solely for the purpose of providing youth football and cheerleading activities;
- d) Leave the Premises free of litter, personal items, materials, and equipment at the end of each day;
- e) Provide in-kind services as delineated in subsection 6.02;

- f) Maintain and replace, at the Foundation's expense and without obligation or liability to the County, all items or equipment belonging to the Foundation that is on the Premises;
- g) Take great care to ensure that Wilson-Chisholm Field is kept in its current condition by rotating practices and drill areas and following field use best management practices and guidance from the County;
- h) Remove all items from the playing surface, excluding bleachers and player benches, after all, practices and games to ensure proper maintenance;
- i) Once the Primary Season is complete, the Foundation will remove any perishable items from and clean the Lundy Field concession stand, and the restroom storage chase;
- j) As part of this License, the County will convey 263 Shoulder Pads which will become the sole property and responsibility of the Foundation. The County will not be responsible for replacing this equipment during or after it has reached the end of its life cycle and the Foundation is responsible for the proper disposal of such property.
- k) Submit to the County a Severe Weather Policy for suspending games and/or practices in the event of severe weather occurrences.

6.02 In-Kind Services: In lieu of payment of the annual maintenance costs to the County, the Foundation agrees to initially provide at a minimum the following in-kind services:

- a) Paint field lines as needed. The color shall be approved by the County's Recreation Program Manager and be consistent with the County's recreation fields;
- b) Maintain the scoreboard system including, but not limited to, the wireless control. Foundation shall be responsible for replacement of scoreboard controller if lost, stolen, damaged, or misplaced;
- c) Maintain the designated containers for trash;
- d) Place daily litter and trash located on the Premises, including the field, the bleachers, the parking area(s), the restrooms, the concession activity stands, and the common areas, into the designated containers so that the trash and litter can be properly disposed of;
- e) Clean and sanitize restrooms, including but not limited to keeping the restrooms stocked with toilet paper, soap, and hand towels that the County will provide to the Foundation.

6.03 Licenses, Permits, and Fees: The Foundation shall be responsible for any and all licenses, permits, and fees related to the operation of their programs at the Premises. As such, the Foundation shall be responsible for obtaining any license or permits required for the operation of concessions or for placing signs at the Premises. The Foundation shall comply with County's Temporary Sign permit process ([https://ircgov.com/communitydevelopment/Applications/Special\\_Event\\_Sign/Temporary\\_Event.pdf](https://ircgov.com/communitydevelopment/Applications/Special_Event_Sign/Temporary_Event.pdf)) and shall coordinate any permanent sign installation with the County's Recreation Program Manager.

6.04 Background Screening: The Foundation is required to run a background screen on its coaches and assistant coaches, consistent with the requirements set forth in Section 943.0438, Florida Statutes, for sexual offenders and sexual predators. If the Foundation wishes to add to the list of coaches or assistant coaches, it must first conduct a background screening and submit the name(s) to the Manager within five days of the approval of the background screening.

6.05 Thor Guard Lightening Operational System: The County maintains a Thor Guard Lightening Operating System for VHSCEC. The Foundation is responsible for ensuring that league

participants and spectators abide by the Thor Guard Lightning Warning Safety Tips posted on the Premises signs in the event the alarm is activated. The Foundation will submit its Severe Weather Policy to the County by July 1<sup>st</sup> of each year to the Manager as delineated in subsection 6.01.

6.06 Non-discrimination: The Foundation shall operate the Premises in a non-discriminatory manner complying with all local, state, and federal laws, rules, or regulations.

6.07 Improvements: The Foundation shall not make or allow to be made any alterations, additions, or improvements (hereinafter "Improvements") without obtaining the prior written approval of the County, which consent shall not be unreasonably withheld, delayed, or conditioned. The Foundation shall deliver to the County a copy of the construction plans and specifications for all Improvements, if applicable, which the Foundation proposes to make in or to the Premises. The Foundation agrees that all approved work shall be done in a good and workmanlike manner. The Foundation shall obtain, at the Foundation's expense, all necessary permits and approvals from governmental authorities for the commencement and completion of any such Improvements and shall furnish evidence of such approval to the County prior to the commencement of construction or installation of any such Improvements. All Improvements shall be constructed in accordance with all applicable building codes, laws, and regulations. All of Foundation's Improvements shall be deemed to be a part of the Premises, and the Foundation shall be obligated to maintain and repair the same. All Improvements in or to the Premises shall, when made, become the property of the County and shall be surrendered to the County upon termination of this Agreement.

### **Section 7 – The County's Obligations and Responsibilities**

7.01 The County's Obligations: Based on available staff and budget limitations, the County agrees to:

- a) Maintain Wilson-Chisholm Field with turf maintenance services;
- b) Do initial lining for the first game set forth in the Foundation's schedule;
- c) Provide field lighting for the Premises including all costs associated with maintenance of the equipment and bulb replacement;
- d) Pay for utilities including water, sewer, electric;
- e) Maintenance and operation of the Thor Guard Lightening Operating System.

### **Section 8 – Emergency County Use**

8.01 Emergency County Use: In an emergency declared by the appropriate authorities under Chapter 252, Florida Statutes, the County reserves the right to use the Premises as a part of its emergency response and recovery operation as long as reasonably necessary in the County's opinion. In such an event, the County shall restore the Premises at the County's expense to the same condition as prior to the County's use. For said restoration, time will be of the essence.

### **Section 9 – Rights to Assign**

9.01 Assignment: Neither the County nor the Foundation shall have the right to assign any or all of its rights and interests under this Agreement to any successor in business or parent company without prior written consent of both parties.

## **Section 10 – Indemnification**

10.01 Hold Harmless: The Foundation shall defend, indemnify and hold the County harmless from any and all claims for damages arising out of this Agreement, except for those claims arising out of the County's own negligence. This includes, without limitation, 'attorneys' fees, on account of injury or damage to persons, firms or corporations or to property directly or indirectly arising out of or relating to this agreement, the performance or breach thereof, or the use or occupancy of the Premises, the parking lot area or other areas of the Premises by the Foundation. In the event the Foundation shall fail to defend any such action on behalf of the County to the satisfaction of the County, the County may, but shall not be obligated to, defend the same by counsel of its choice, the cost of which defense to be borne exclusively by the Foundation. Nothing in this agreement shall be construed to affect in any way the County's rights, privileges, and immunities, including sovereign immunity as provided by Florida law.

## **Section 11 – Liability**

11.01 Liability for Damage or Injury: The County shall not be responsible for any loss, damage, or injury which may be sustained by any party or persons at the Premises other than the damage or injury caused solely by the negligence of the County.

11.02 The Foundation is an Independent Operator: The Foundation is and shall be at all times, an independent operator that is responsible to all parties for all of its acts or omissions.

11.03 FYFL Charter Rules: The Foundation shall operate consistent with Charter Rules except as otherwise provided in this Agreement.

## **Section 12 – Insurance**

12.01 Insurance: The Foundation shall procure and maintain comprehensive general liability insurance throughout the term of this Agreement providing for a minimum of \$1,000,000 per occurrence. If the Foundation participates in Away Games, it shall also procure and maintain automobile insurance throughout the term of this Agreement, providing for a minimum \$1,000,000 combined single limit, to include molestation coverage. The insurance policies shall be written and with a company that is acceptable to the County's Risk Management Division (must have at least an A- VII rating with A.M. Best). The name of the insured on both policies must be the Foundation, and the County must be named as an additional insured. Within five (5) days of the execution of this Agreement, the Foundation shall provide the County with both certificates of insurance showing the additionally insured and specifying the deductible of the referenced policies. Updated certificates of insurance must be delivered to the County no later than July 1st of each following year. The certificates shall provide for thirty (30) days prior written notice from the insurer to the County of any cancellation or amendment to the said insurance policies. In the event the Foundation fails to deliver the referenced certificates to the County in the above-stated manner, the County may immediately cancel this Agreement or, but shall not be obligated to, procure the required policies.

## **Section 13 – Termination and Breach of the Agreement**

13.01 Termination: The County shall have the right to terminate this Agreement without cause and thereby end any and all obligations created by this Agreement subject to sixty (60) days' notice to the Foundation.

13.02 Breach of the Agreement: It is a breach of this Agreement if the Foundation fails to maintain the required insurance pursuant to Section 12, and the County may automatically terminate this Agreement. With the exception of Section 12, if the Foundation defaults in performing any of its obligations or breaches any of the material terms of this Agreement, the County will serve written notice on the Foundation and give it thirty (30) calendar days to cure the default or breach. If the Foundation does not cure the default or breach within the thirty (30) day time period, the County may immediately terminate this Agreement.

13.03 Mediation: In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Indian River County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential, and the results of the mediation or any testimony or argument introduced at the mediation shall be admissible as evidence in any subsequent proceeding concerning the disputed issue.

## **Section 14 – Notice**

14.01 Notice: Wherever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by registered or certified mail, postage prepaid, to the respective addresses hereinafter set forth.

To County:

Recreation Program Manager  
1590 9<sup>th</sup> St S.W.  
Vero Beach, Florida 32962

With Copy To:

Indian River County Attorney  
1801 27<sup>th</sup> Street  
Vero Beach, Florida 32960

To Foundation:

Calvin Moment, President  
Vero Beach Foundation Indians Football and Cheer Corporation  
8526 105<sup>th</sup> Ave  
Vero Beach, FL 32967

**Section 15 – Governing Law**

15.01 Rules and Regulations: The Foundation will observe, obey and comply with all rules and regulations of both its Florida Youth Football League charter and those adopted by the County and all laws, ordinances, and regulations of other governmental units and agencies having lawful jurisdiction.

15.02 Venue: Venue for any lawsuit shall be in Indian River County, or in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

VERO BEACH FOUNDATION INDIANS  
FOOTBALL AND CHEER CORPORATION

BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA

BY: \_\_\_\_\_  
Authorized Representative

BY: \_\_\_\_\_  
Peter D. O’Bryan, Chairman

Print Name: \_\_\_\_\_

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

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

BY: \_\_\_\_\_  
Jason E. Brown, County Administrator

Approved as to form and legal sufficiency:

ATTEST: Jeffrey R. Smith  
Clerk of the Court and Comptroller

BY: \_\_\_\_\_  
Dylan Reingold, County Attorney

BY: \_\_\_\_\_  
Deputy Clerk