

**BETWEEN THE SCHOOL BOARD
OF BREVARD COUNTY, FLORIDA
AND
THE BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

FOR THE JOINT USE OF REAL PROPERTY

THIS AGREEMENT, made and entered into this 14 day of October, 2008 by and between the School Board of Brevard County, Florida, a public corporation and governing body of the school district of Brevard County, duly created in accordance with Article IX, Section 4(b) Florida Constitution, and Chapter 230, Florida Statutes, hereinafter referred to as the "School Board", and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, the governing bodies of the County and the School Board are mutually interested in an adequate program of community recreation; and

WHEREAS, in the interest of providing the best services with the least possible expenditure of public funds, cooperation between the County and the School Board is necessary and desirable; and

WHEREAS, the School Board is charged with financing the operation of all educational programs within the Brevard County School District and has limited funds to expend for the development of school grounds for playgrounds or fully developed recreational facilities; and

WHEREAS, this joint agreement is entered into for the purpose of expanding public recreational facilities within the county without impairing school facilities or disrupting the educational process; and

WHEREAS, the County has established, by charter provisions, resolutions or otherwise a Parks and Recreation Department for implementing the programs of community recreation; and

WHEREAS, said governing bodies are authorized by Chapter 57-1166 of the Special Acts of Florida to enter into mutual agreements with each other, and to do any and all things for the mutual benefit of each of said boards; and

WHEREAS, Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969, permits any political subdivision of the State of Florida to exercise jointly with any other political subdivision of the State of Florida, any power, privilege, or authority which said political subdivision share in common and which each might exercise separately; and

WHEREAS, the acquisitions, ownership, custody, operation, maintenance, lease or sale of real property are all permitted purposes of an interlocal agreement under the Florida Interlocal Cooperation Act of 1969; and

WHEREAS, political subdivisions may provide for the manner of allocating any liabilities that might be incurred through the performance of an interlocal agreement and insuring against such liabilities; and

WHEREAS, the School Board has in the past entered into various agreements relating to recreation with the Board of County Commissioners of Brevard County and is desirous of consolidating and superseding all of said agreements by the execution of this agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and the School Board do hereby agree to cooperate with each other in carrying out the above purposes, and to that end do hereby agree as follows:

1. **Availability of School Board Facilities:** The School Board will strive to make any school recreational facility available to the County for community recreational activities, when requested in writing to the School Principal by the County Director of the Parks and Recreation or Designee. Approval for use shall be subject to the needs of the school and the district.

2. **Availability of County Facilities:** The County will strive to make available any County recreational facility to the School Board for special school events, recreational activities, athletic events and other programs when requested in writing by the Superintendent or designee. Approval for use shall be subject to the needs of the Parks and Recreation Department and the County.

3. **Non-Exclusive Use:** The School Board and the County hereby grant the non-exclusive right to use their recreational facilities jointly for purposes in accordance with this agreement and subject to the limitations set forth herein.

4. **Compliance with Laws and Policies:** The use of selected facilities shall be in accordance with all applicable rules, regulations and laws and the policies and procedures of the School Board and the County. The School Board and the County reserve the right to disapprove of any and all activities held on school or county maintained property, respectively, which might be in conflict with the respective administrative policies and procedures of the School Board or County. It shall be each party's responsibility to be aware of and comply with all federal, state and local laws in the exercise of its rights and duties under this agreement.

5. **Memoranda of Understanding and Assessment of Costs:** In addition to this agreement, the parties intend and authorize their respective chief executive officers or their designees to enter into a Memorandum of Understanding as needed during the term of this agreement for each school or facility

to be used by the County and/or the School Board for purposes which will supplement this agreement and outline the particulars of the School Board's and County's use of each school or facility. Each Memorandum of Understanding and Addendum A or B (MOU) is subject to an annual review and renewal on July 1 each year. The MOU is also subject to on-going review by the parties and may be amended from time to time during the year by mutual agreement of the parties. Use of facilities in addition to those provided herein is governed by School Board Rule 7510 and 7555 for facility usage and County Fee Schedule. Either party may assess the other custodial fees, electricity and other utility costs, and for any other direct costs associated with the use of a facility.

6. **Coordination with Municipal Users:** The County reserves the right to coordinate with the various municipalities for providing recreational activities on school property subject to the School Board's prior approval, but the County shall remain responsible to the School Board for the purposes of this agreement.

7. **Exclusive Use During School Hours:** The recreational facilities, plant, and improvements shall be the exclusive use of the School Board during school hours or school activities during the regular or modified calendar school year. The County may have use of school facilities as provided in each Memorandum of Understanding after regular school hours and after school usage and on weekends and holidays.

8. **Resolution of Disputes** In the event of any dispute or difference arising as a result of the recreation program being conducted on either the school or County site jointly used and selected as provided herein, said dispute or difference shall be appealed by those affected parties to the Director of the Parks and Recreation Department (for disputes arising at a County site) and School District Area Superintendent (for disputes arising at a school site) for interpretation and/or settlement.

9. **Employee Status:** It is understood and agreed that personnel employed by the County shall be under the supervision and control of the County when using school facilities in accordance with this agreement. The school principal shall cooperate with the Area Parks Operations Manager in the operation of its program or in the facilities of said principal's jurisdiction. It is further understood and agreed that personnel employed by the School Board shall be under the supervision and control of the School Board when using County facilities assigned to them. The County Area Parks Operations Manager shall cooperate with the school principals in the operation of its program. Nothing in this agreement shall be interpreted or construed to constitute employees or agents of one party to be the employees, agents or representatives of the other party. Persons employed by either party to this agreement shall have no claim against the other party for pension, worker's compensation, unemployment compensation, civil service, or any other employee benefit, right or privilege granted

by operation of law, or otherwise. This agreement shall not confer any third-party beneficiary status upon any employee or agent of the other party.

10. Programs for School Age Children: It is recognized that school properties and facilities are intended primarily for school purposes and for the benefit of children of school age. It is therefore agreed that, in planning programs and scheduling activities on school grounds that the educational needs and opportunities of such children shall be given preference and the children adequately protected.

11. Maintenance/Facilities: The County agrees to participate in the maintenance of the grounds and facilities at schools subject to this agreement and will provide to the School Board a schedule for regular and periodic maintenance to allow for scheduling of school programs. The County Manager or designee shall submit an annual report to the Superintendent to the Director of Maintenance and the Director of Risk Management outlining the management and maintenance program, any improvements as well as recurring costs. Each Memorandum of Understanding will identify the management and maintenance responsibilities, including site improvements(s) and recurring costs that will be borne by the School Board and the County. The design, construction and location of any and all improvements to be located or constructed on School Board or County property shall be in accordance with that entities' rules, regulations, and approval with regards to storage, installation, or construction. Any and all design, construction and location of any and all site improvement projects must receive approval from the entity being modified prior to installation or construction.

12. Operations: The County agrees to notify the principal of any school which has a Memorandum of Understanding in effect that it has authorized use of the area, specifying the time of use and naming the responsible person prior to the start of the fiscal year in order to comply with sections of this agreement. Approved concession may be operated or maintained by either party in conjunction with their respective use of listed facilities. Concession must be restricted to nonprofit organizations or groups. Alcoholic beverages and tobacco or tobacco like products shall be prohibited.

13. Safety: Each party recognizes that it is in the best interest of both parties to provide a safe recreational area and each party agree to utilize its best efforts to provide proper supervision and safe conditions during their respective use of the facilities. In the event that either party becomes aware of an unsafe condition it will correct the unsafe condition immediately or, if the correction of the condition is the responsibility of the other party, the using party will stop use of the facility immediately and notify the other party in writing of the hazard and the need for corrective action. The party responsible for maintaining the facility shall correct the condition immediately or take reasonable

and proper precautions until corrective action can be taken. Once the correction is made the using party shall resume use.

14. Insurance: Each party shall at all times maintain liability insurance in amounts of \$100,000 per claimant and \$200,000 per occurrence, or such higher limits as may be imposed by any future amendments to Section 728.68, Florida Statutes. Such insurance may be provided by a self-insurance reserve program.

15. Indemnification: The School Board and County agree to indemnify and hold the other party harmless from all liability for any injury or damage including claims of discrimination or intentional acts or a similar magnitude which occurs on the property or in any facility pursuant to this agreement and which occurs during the course of any program or activity sponsored by the other party to this agreement. The School Board and County's promise to indemnify and hold harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgement(s), and/or settlement of any complaint, claim or legal action. As used in this paragraph, the term "School Board" and "County" includes any of its agents, third-party entities servants and employees.

A. Nothing in this agreement shall be deemed as a waiver of sovereign immunity for either the School Board or the County beyond any statutory limited waiver which may have been or may be adopted by the Florida Legislature and nothing in this agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity.

B. The School Board and County agree to comply with any and all federal, state and local civil rights laws, including, but not limited to Title VI of the Civil Rights Act of 1964 as amended; Title VII of the Civil Rights Act of 1968 as amended; Section 109 of title I of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973; the American with Disabilities Act of 1990; the Age and Discrimination Act of 1975; Executive Order 11063; and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

C. The School Board and County will not discriminate against any employee, applicant for employment, or clients because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to providing services under this Agreement. The School Board and County will take affirmative action to insure that all employment practices and assistance to clients are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff, termination, rates of pay for other forms of compensation, and selection for training, including

apprenticeship. The School Board and County agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the School Board and County setting for the provisions of this nondiscrimination clause.

D. Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other paragraph or any part of any paragraph in this Agreement.

E. The School Board of Brevard County, hereinafter referred to as "School Board" and County have the option of contracting with an outside agent or third-party entity for the use of each other's property for recreational pursuits. If either party exercises this option, they shall inform the other party and obtain approval of their intentions prior to allowing the outside party the use of property owned by the other entity. Should the School Board and County exercise this option with a non-governmental agent or third-party the School Board and/or County shall commence a written contract with that non-governmental agent or third-party. The contract shall include both the School Board and County in the indemnification, hold harmless clause and the additional insured provision of the contract. The following wording shall be in the contract: *"The User shall Indemnify and hold the School Board of Brevard County (School Board) and/or the Brevard County Board of County Commissioners (County); its agents, servants and employees; harmless from all liability for any injury or damage which occurs at any and all locations on any property or in any facility made available to the User by the School Board or County pursuant to this agreement and which occurs during the course of any program or activity sponsored by the User. This agreement includes claims of intentional discriminatory acts that occur in the course of use or operation. This agreement to indemnify and hold harmless includes an obligation to indemnify and hold the School Board and the County harmless for liability for any negligence on the part of the School Board and County. The User's promise to indemnify and hold harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgement, and/or settlement of any complaint, claim or legal action."* Agents and third-party entities are defined as any individual or entity hired or contracted by the School Board or the County to perform services on their behalf. An example of this would be Little League Baseball, Soccer and the like. A copy of the contract with the agent or third-party shall be provided to the Risk Management Department for the School Board and the County no later than 10 days after the contract is signed. Should the School Board or County fail to obtain a written contract from the third-party entity that is using the non-moving entity's property, the entity that was responsible for obtaining the written contract shall be fully and completely responsible for the costs associated with any cost, repair,

damage, award, etc. Nothing herein shall be construed as a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes.

16. Assumption of Risk: The County agrees to assume all risks and liability to itself, its agents or employees and shall be responsible to fully defend, indemnify and hold the School Board harmless from and against any and all claims arising from or related to the County's or the use by any third parties authorized by the County to use School Board facilities if such claims are caused solely by the act or acts of supervision, negligence or failure to exercise proper precautions of and by the County's agents or employees. The School Board agrees to assume all risk and liability to itself, its agents or employees and shall be responsible to fully defend, indemnify and hold the County harmless from and against any and all claims arising from or related to the School Board's or the use by any third parties authorized by the School Board to use County facilities if such claims are caused solely by the act or acts of supervision, negligence or failure to exercise proper precautions of and by the School Board, its agents or employees. Each of the parties agrees to provide the other with written notice of any claim subject to this provision within ten (10) days of its receipt of notice that a claim exists. The parties agree to cooperate fully in the defense of such claim. Notice of claim shall be deemed to be given on the date of mailing thereof by U.S Mail, First Class Delivery.

17. Assignment: This agreement may not be assigned. This provision is not intended to prevent or prohibit the County or the School Board from charging an approved fee to third parties for the use of facilities.

18. Breach: In the event of a breach of any term of this agreement by a party hereto, the other party shall provide written notice of such breach and allow a reasonable period of time to cure the breach; the reasonableness of the time period being determined by the circumstances and nature of the breach.

19. Attorney's Fees: Each party is responsible for their own costs and attorney's fees, should it become necessary to institute legal action to enforce any of the terms of this agreement.

20. Facilities: This agreement includes use of all School Board recreational facilities and County operated parks and facilities.

21. Governing Law: This agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

22. Venue: Venue for any legal action by any party to this agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

23. Modifications to Agreement: This agreement constitutes the entire agreement between the County and the School Board and supersedes all prior written or oral understandings. This agreement may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

24. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way.

25. Notice: Any notice required to be provided herein shall be directed to the parties' chief executive officers at the following addresses:

THE COUNTY OF BREVARD
Office of the County Manager
2725 Judge Fran Jamieson Way
Viera, FL 32940

THE SCHOOL BOARD OF BREVARD
COUNTY, FLORIDA
Office of the Superintendent
2700 Judge Fran Jamieson Way
Viera, FL 32940

26. Representatives: Each party hereto reserves the right to exercise its functions hereunder through its properly designated delegates, designees or representatives.

27. Pools: The School Board does hereby grant a non-exclusive use of the swimming pools at Merritt Island High, Rockledge High, Titusville High, Satellite High, Jackson Middle and Madison Middle Schools to the County for available time and for use per the following conditions:

A. The County agrees to share all costs related to the operation and maintenance of the pools (including custodial and maintenance personnel, equipment, chemicals and supplies, parts and labor for all repairs not considered capital improvements, and utilities to operate the pools based upon actual usage). The anticipated use by the County will be approximately four (4) months; the use by the School Board will be approximately four (4) months, and the remaining four (4) months would be considered as equally shared use, and the County's share will then be approximately one-half of the actual total costs. The Parks and Recreation Department Director or designee shall verify the charges by the School Board. Costs will be calculated and billed by the School Board and paid by the County annually.

B. The County shall furnish the principal of each school a schedule for use which shall be coordinated and integrated with the school's swimming programs and all of the rules of said pools. Each principal may approve or disapprove any activities scheduled on their school's grounds, including the swimming pools and surrounding areas.

C. The County shall provide supervision and safety personnel during the time the pool is used by the County.

D. The county shall coordinate scheduling for use of the pool by third parties so that one party's use of the pool will not conflict with any other use of the pool.

E. The School Board reserves the right to allow other groups use of the pools for available swimming time which shall not be in conflict with any school or county activity schedule in the swimming pools. The principal of each school shall be the final authority in any scheduling conflicts.

F. The School Board shall provide for the daily maintenance throughout the year regardless of the schedule for use by the County of said swimming pools. Said maintenance shall include the personnel and equipment necessary to clean the pool, change and/or clean the filters, and monitor and/or add the necessary chemicals to the pools and to purchase chemicals necessary for the aforementioned maintenance. No structure may be added to the pools by the County without School Board approval. No assessments may be made against the School Board to incur major capital or maintenance costs of said pool due to the County's improper, excessive or negligent use of the pool, the County agrees to reimburse the School Board for said costs.

G. Capital improvement costs will be shared on a matching basis by both parties where mutually beneficial. An inspection of each swimming pool will be conducted annually by representatives of both agencies to identify those capital improvements required and the funding sources for those improvements. This inspection will be scheduled in January of each year so that the required funding can be authorized and the work completed in a timely manner.

H. The principal of each school shall arbitrate differences with respect to desired water temperature when such differences occur between users of the same swimming pool and decision of the principal shall be final.

I. At the end of usage the swimming pool and surrounding vicinity in as good a condition as it was received, reasonable wear and tear accepted.

J. This Agreement covers the pool, deck and facility housing the filtration and chemical treatment equipment. Arrangements for the use of restrooms or dressing rooms will be coordinated by the principal or designee and Area Parks Operations Manager or designee. The County will provide supervision during the time(s) used. The School Board shall provide a County representative with a key to secured areas covered under this Agreement. The County agrees not to duplicate the key without permission from the School Board. The County shall surrender keys at any time there is a conflict with use until such conflict is resolved or the seasonal use of the pool has ended, which ever comes first.

28. Provisions: The provisions of this agreement shall supersede all provisions of the May 21, 1996 facility use agreement and the provisions of the May 24, 1999 swimming pool use agreement

between the Board of Public Instruction of Brevard County, Florida and the Board of County Commissioners of Brevard County, Florida.

29. Effective: This agreement shall take effect when adopted by the Board of County Commissioners and the School Board of Brevard County, Florida and fully executed by their duly authorized representatives.

30. Term: The term of this agreement shall be five (5) years from the effective date and automatically renewed at the end of said five (5) years unless terminated as provided herein. This agreement may be terminated at any time by mutual agreement to the parties or by not less than 12 months prior notice in writing of either party. The School Board or County may request immediate termination of this agreement in whole or in part when the material provisions of this agreement have been flagrantly violated.

31. Termination: In the event this agreement is terminated it is agreed that:

A. Any permanent improvements or equipment installed by County on School Board property upon termination of this agreement shall become the property of the School Board.

B. Any permanent improvements or equipment installed by the School Board on County property upon termination of this agreement shall become the property of the County.

C. Any other equipment installed by the County on School Board property such as playground equipment, etc., upon termination of this agreement, the County shall, at the option of the School Board, either remove this equipment or be reimbursed at the amortized cost.

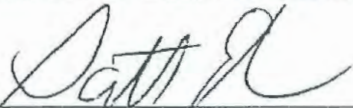
D. Any other equipment installed by the School Board on County property, upon termination of this agreement, the Board shall, at the option of the County, either remove this equipment or be reimburses at the amortized cost.

BE IT FURTHER RESOLVED THAT if any part(s) of this agreement is in conflict with any law, statute or rule of a higher governing body, then such part(s) shall be deemed inoperative to the extent it conflicts therewith and shall be deemed modified to conform to such law, statute, or rule.


IN WITNESS WHEREOF, the parties hereto by their duly authorized officers have set their hands and seals this 14 day of October, 2007, 2008.

ATTEST:

CLERK TO THE BOARD

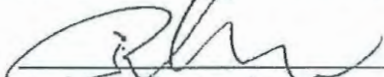
By: 
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

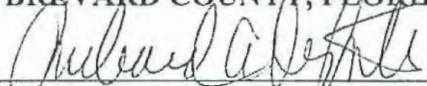
By: 
Truman Scarborough, Chairman

As Approved by the Board on 10-14-08

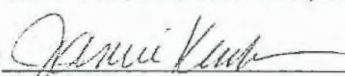
Reviewed for legal for and content:


Assistant County Attorney

SCHOOL BOARD
OF BREVARD COUNTY, FLORIDA

By: 
Dr. Richard A. DiPatri, Superintendent

SCHOOL BOARD
OF BREVARD COUNTY, FLORIDA

By: 
Ms. Janice Kershaw, Chairman