

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT**, ("Agreement") entered into this _____ day of _____ 2023, by and between BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, hereinafter referred to as the "County" and 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".

RECITALS

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 desirable; and

WHEREAS, this joint agreement is entered into for the purpose of expanding public recreational facilities within the county; 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 or 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 another 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, ownerships, 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 County and School Board, has in the past, entered into various agreements relating to recreation and is desirous of entering into a long-term agreement for Hoover Middle School located at 2000 Hawk Haven Drive, Indialantic, FL 32903; and

WHEREAS, the County seeks to invest \$3 million dollars in improving Hoover Middle School athletic fields and associated amenities;

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:

1.0 RECITALS.

The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference.

2.0 TERM.

The term of this Agreement begins on upon the signature of both Parties and ends twenty-five (25) years from that date unless extended or modified in accordance with this Agreement. Upon conclusion of the term, this agreement shall automatically renew for one (1) year terms until terminated.

3.0 PUBLIC RECORDS.

3.1 If a request to inspect or copy public records relating to this agreement is received by the County and the School Board, such requests will be handled pursuant to Section 119, Florida Statutes and any internal County or School Board policy or procedure.

3.2 If there are questions regarding the application of Chapter 119, Florida Statutes, the duty to provide Public Records relating to this Agreement, contact the Custodian of Public Records. Custodian of Public Records for County: Patricia Strickland, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940: Patricia.Strickland@Brevardfl.gov (321)633-2046. Custodian of Public Records for School Board is recordsrequest@BrevardSchools.org

4.0 E-VERIFY.

The County and the School Board shall comply with Chapter 448.095, Florida Statutes with regards to E-Verify.

5.0 IMPROVEMENTS.

Any and all design, construction and location of any and all site improvement projects must receive approval and be coordinated with the School Board Superintendent or designee prior to installation in accordance with the School Board's rules and regulations and shall not be unreasonably denied. The County shall obtain any required permits for the infrastructure improvements. The School Board Building Official is the Agency Having Jurisdiction (AHJ) for building permits. The School Board shall not charge the County for any School Board permits required for site improvement projects.

The County initially seeks to invest \$3 million at Hoover Middle School. Potential infrastructure improvements could include but are not limited to:

- Renovating of soccer fields
- Removing existing lighting, upgrade and install new field lighting
- Installing new restroom
- Relocating irrigation pump / well
- Installing a playground and shade structure
- Installing fencing
- Installing bleachers
- Expanding and improving parking area
- Constructing a new basketball court

The decision(s) as to timing, location and scope of improvements funded by the County rests solely with the County. The infrastructure improvements would be constructed in the Improvement Area as outlined in Exhibit "A" which is incorporated by reference.

6.0 INSURANCE.

The County shall name and maintain the Board as an additional insured on the County's liability policy. The Board shall provide the County with a copy of a "Notice of Coverage" upon request of the County.

Each party shall, at all times, maintain liability insurance in amounts of \$200,000 per claimant and \$300,000 per occurrence, or such higher limits as may be imposed by any future amendments to Section 768.28 Florida Statutes. Such insurance may be provided by a self-insured reserve program.

7.0 HOLD HARMLESS / INDEMINIFICATION.

To the extent allowed by law and subject to the provisions set forth in Sec. 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Sec. 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

Nothing in this agreement shall be deemed as a waiver of sovereign immunity for either the County or the School Board 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. Nothing herein shall be construed as a waiver of the County's or School Board's sovereign immunity, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations and claims. Nothing in this agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim or cause of action which would otherwise be barred by sovereign immunity or by operation of law.

7.2 The Parties shall comply with all applicable federal laws, state laws, local ordinances, and the policies and regulations of the County and the School Board. In the event of a conflict between School Board and County policies and/or regulations, the School Board policies/regulations prevail.

7.3 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.

7.4 The County and School Board 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 County and School Board exercise this option with a non-governmental agent or third-party the County / School Board shall commence a written contract with that non-governmental agent or third-party. The contract shall include both the County and School Board in indemnification, hold harmless clause and an additional insured provision, to the limits required in Section 6.0 of this Agreement. The following wording shall be in the contract:

"The User shall indemnify and hold the Brevard County Board of County Commissioners (County and/or the School Board of Brevard County (School Board); 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 County or School Board 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 County and School Board harmless for liability for any negligence on the part of the County and School Board. 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 County or School Board to perform services on their behalf. An example of this would be a Recreation Partner providing 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 County and the School Board no later than 10 days after the contract is signed. Should the County or School Board 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 cost 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.

8.0 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.

9.0 ATTORNEY'S FEES.

In the event of any litigation or arbitration between the parties relating to this agreement, each party shall bear its own attorney's fee and costs, including appellate fees and costs. The termination of the agreement by the County or School Board by reason of default by another party shall not relieve the parties of any obligations theretofore accrued under this agreement prior to the effective date of such termination.

10.0 USAGE

10.1 The School Board will make Hoover Middle School athletic facilities available to the County for community recreational activities after school hours, evenings, weekends and holidays. Hoover Middle School athletic facilities shall specifically include the athletic fields, lighting, the playground, the parking lot and the new restroom. This term shall not include the track, the tennis courts and the basketball courts.

10.2 Facility Use:

A. The Hoover Middle School athletic facilities shall be for the exclusive use of the School Board during school hours or school activities during the regular or modified calendar school year.

B. The School Board hereby grants the right to use the recreational facilities to the County during non-school hours and excluding sanctioned school activities.

C. The County reserves the right to coordinate and enter into agreements with the various municipalities and Recreation Partners for providing recreational activities. When the County is not using the recreational facilities, the control and responsibility of said facilities revert to the School Board.

D. The School Board authorizes the County, or its Recreation Partners to operate concessions. Alcoholic beverages and tobacco or tobacco like products shall be prohibited. The School Board agrees that they will not be entitled to any portion of the concession revenues.

E. The facility use priority is established as

- a. Hoover Middle School
- b. County including Recreation Partners
- c. Any School Board usage other than Hoover Middle School

d. Community

F. On or before July 1 of each year, the County shall provide the Hoover Middle School principal with a usage schedule for the upcoming year. The usage schedule information shall include the name of the group or organization, their contact information and a copy of their insurance as appropriate. On or before September 1 of each year, the Hoover Middle School principal shall provide the County with a school usage schedule.

10.3 Maintenance of Facilities. The County agrees to maintain the Hoover Middle School athletic facilities at a standard appropriate for public use. If a new restroom is constructed, the County shall maintain said restroom only during County usage. The School Board may use the new restroom for its purposes upon request to the County. The County shall not be responsible for the basketball court, the tennis courts, the track or the existing restroom. Should the School Board retain the existing restroom, the School Board shall be responsible for the maintenance of that restroom and associated infrastructure. The School Board reserves the right to monitor maintenance responsibilities.

10.4 Utilities. The County shall pay for the associated athletic field lighting fees and waste removal fees related to County usage. The School Board shall pay for water and sewer service to the restroom. Should the School Board observe any damage to the utilities they shall promptly notify the County.

10.5 Resolutions of Disputes. In the event of any dispute or difference arising as a result of a County recreation program being conducted at Hoover Middle School, said dispute or difference shall be appealed to the Director of Parks and Recreation Department. For disputes arising from School Board use of Hoover Middle School, said dispute shall be appealed to the Hoover Middle School principal. If the dispute cannot be resolved, the affected parties may appeal to the County Manager for disputes arising regarding a County use or the School Board Superintendent for a School Board use.

10.6 It is understood and agreed that personnel employed by the County shall be under the supervision and control of the County when using Hoover Middle School in accordance with this agreement. Nothing in this agreement shall be interpreted or construed to constitute employees or agents of one party to be the employees, agents or representative of the other party. Persons employed by either party to the 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. It is

understood that Recreation Partners, their representatives, agents, employees and volunteers are not employees of the County.

11.0 SEVERABILITY.

If any clause or provision of this agreement is illegal, invalid or unenforceable under present or future laws (the deletion of which would not adversely affect the receipt of any material benefit or substantially increase the burden of any part hereto) effective during this Term, then and that event, it is the intention of the parties that the remainder of this agreement, and the Term covered thereby, shall not be affected. All rights, powers, and privileges conferred by the agreement upon the parties shall be cumulative but restricted to those given by law.

12.0 TIME OF ESSENCE.

Time is of the essence of this agreement and each and all of its provisions.

13.0 VENUE AND WAIVER OF JURY TRIAL.

The venue of any suit or proceeding brought for the enforcement of or otherwise with respect to this agreement shall always be lodged in the State Courts of the Eighteenth Judicial Circuit in and for Brevard County, Florida. To the extent permitted by law **COUNTY AND SCHOOL BOARD EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY.**

14.0 GOVERNING LAW.

This agreement shall be governed, interpreted and construed according to the law of the State of Florida.

15.0 COMPLIANCE WITH LAWS AND POLICIES.

The use of the property shall be in accordance with all applicable, federal, state, and local laws and the policies and procedures of the School Board and the 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.

16.0 MODIFICATION TO AGREEMENT.

This Agreement constitutes the entire agreement between the County and 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. The Parks and Recreation Director and the Assistant Superintendent Facilities Services may make minor amendments to facility usage.

17.0 TERMINATION.

This Agreement can be terminated by the County with or without cause. The School Board shall provide written notice to the County in the event of the County's failure to comply with the terms of this Agreement. The School Board may terminate this Agreement in the event the County fails to correct any failure to comply with the terms of this Agreement within ninety (90) days of receipt of said notice.

18.0 NOTICES.

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

BOARD OF COUNTY COMMISSIONERS

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

Copies of the Notices shall be mailed to the Parks and Recreation Director, 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940, the Assistant Superintendent Facilities Services at 2700 Judge Fran Jamieson Way, Viera, Florida 32940 and the Hoover Middle School principal at 2000 Hawk Haven Drive, Indialantic, FL 32903.

19.0 REPRESENTATIVES.

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

20.0 DISPOSITION OF PROPERTY.

It is hereby mutually agreed and understood that any improvement located thereon and not permanently attached thereto may be removed by the County should the agreement terminate.

21.0 EFFECTIVE.

This agreement shall take effect when adopted by the County and the School Board and is fully executed by their duly authorized representatives. The effective date shall be the date the last party signs the agreement.

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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 _____ day of _____, 2023

ATTEST:

CLERK TO THE BOARD
COMMISSIONERS

BOARD OF COUNTY

By: _____
Rachel Sadoff, Clerk

By: _____
Rita Pritchett, Chair

Reviewed for legal form and content:




Justin Caron, Assistant County Attorney

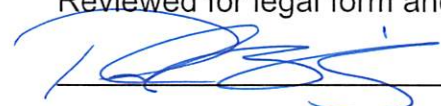
 SCHOOL BOARD
OF BREVARD COUNTY, FLORIDA

By: _____
Susan Hann
Acting Superintendent

SCHOOL BOARD
OF BREVARD COUNTY, FLORIDA

By:  _____
Mathew Susin, Chair

Reviewed for legal form and content



Paul Gibbs, General Counsel