



## Recreation Partner Facility Use Contract

**This Contract**, made and entered into this 13th day of March 2019, by and between the **Board of County Commissioner of Brevard County, Florida**, a political subdivision of the State of Florida, hereinafter referred to as “County”, and **Greater West Melbourne Athletic Association, Inc.** hereinafter referred to as “Contractor” a Florida Not for Profit Corporation.

### W i t n e s s e t h

**Whereas**, the County is the owner, lessee, or authorized administrator of certain real property located in Brevard County, Florida, commonly known as Max K. Rodes Park, hereinafter referred to as “Park”, located at 3410 Flanagan Avenue, West Melbourne, Florida 32904; and

**Whereas**, the County recognizes that Recreation Partners play a significant role in providing recreation services; and

**Whereas**, the Contractor is financially a self-supporting, Florida Not for Profit Corporation Contractor which provides an approved public recreation program(s); and

**Whereas**, the County desires to partner with the Contractor to provide a public recreation program(s) as hereinafter set forth; and

**Whereas**, the Contractor desires to utilize certain buildings, structures, grounds, equipment and facilities, hereinafter referred to as “Complex”, located at the Park, and further described in **Exhibit A**, attached hereto and made a part hereof by this reference, to provide a public recreation program(s) as hereinafter set forth; and

**Whereas**, the County may provide parks, preserves, playgrounds, recreation areas, and other recreational and cultural facilities and programs pursuant to Section 125.01(1)(f), Florida Statutes; and

**Whereas**, the approved public recreation program(s) provided by the Contractor are of a nature that could be provided by local, state or other governmental entity; and

**Whereas**, the approved public recreation program(s) provided by the Contractor are in the best interest of the public's health, safety, and/or welfare; and

**Whereas**, the Contractor has submitted a Recreation Partner Application to the Parks and Recreation Department Director, herein after referred to as “Director”, or designee; and

**Whereas**, said Application has been approved by the Brevard County Parks and Recreation Department, herein after referred to as “Department” and the appropriate advisory board(s).

**Now, Therefore**, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

**Recitals.** The foregoing recitals are true and are incorporated herein by reference.

**1. Term.** This Contract shall be effective from the date of the last signature for a period of two years. It is hereby mutually agreed and understood that the Contractor may request renewal of this Contract for an additional two year term and a subsequent renewal for an additional one year term by submitting a completed renewal application received at least thirty days prior to the date of termination of the current term. The Contractor agrees it shall not be entitled to the renewal and agrees it shall not be entitled to any monies or damages should the Director, designee or County decide not to renew this Contract.

**2. Use of Complex.** The County hereby agrees to permit the Contractor non-exclusive use of the Complex located at the Park for the purpose of providing Youth Football, Cheerleading, Little League Baseball/Softball and Basketball, subject to the terms of this Contract. Use of other parks and/or facilities by the Contractor must have prior approval of the Area Manager and are subject to the fees and charges outlined in the Brevard County Parks and Recreation Department Fee Schedule adopted by the Board of County Commissioner and in effect at the time of requested use.

The Contractor shall submit a complete calendar of events or schedule depicting planned activities including but not limited to league games, league tournaments and practice schedules to the Area Manager within ten days after execution of Contract.

In scheduling the use of the Complex, the County has first priority, the Contractor has second priority, and all others have third priority in scheduling. In cases of facilities on Brevard County School Board owned property, the School Board has first priority, the County has second priority, the Contractor has third priority, and all others have fourth priority in scheduling. Each party agrees that it will provide the other party with information concerning any schedule changes for use of the Complex as far in advance as possible but no later than twenty-four hours prior to use. The Contractor shall coordinate with the County only for all tournaments and fundraisers.

**3. Facility Use Fee.** The Contractor shall pay direct costs arising from the Contractor’s use of the Complex. All uses other than those described in **Exhibit A** will be charged in

accordance with the fees and charges outlined in the Brevard County Parks and Recreation Department Fee Schedule adopted by the Board of County Commissioner and in effect at the time of requested use.

**4. ADA Compliance.** The County and Contractor shall conform to current requirements of the Americans with Disabilities Act in the performance of this Contract, and shall not cause or place at the Complex any condition causing the Complex to become non-compliant. The parties shall work together to remedy any known violations of the ADA that may occur.

**5. Attorney's Fees.** In the event of any legal action to enforce the terms of this Contract each party shall bear its own attorney's fees and costs.

**6. Background Investigation Check.** The Contractor's employees, contractors, subcontractors, agents, representatives and volunteers and other persons providing a public recreation program at the Complex shall be screened at a High Level (Level 1). The Parks Department shall be responsible for, and pay the cost of, having background screening checks performed on all of the Partner's employees, contractors, subcontractors, agents, representatives and volunteers.

The Contractor shall not allow any employees, contractors, subcontractors, agents, representatives or volunteers to work unsupervised with at risk populations prior to such person successfully completing a High Level (Level 1) background screening. The Contractor shall be responsible for providing all needed personal identifying information necessary to perform the background screening(s) required to the Department for review/approval and further action by the Director.

The Director may deny the Contractor the ability to utilize a staff member, volunteer or any other person providing a public recreation program at the Complex based on the results of the background screening, at the Director's discretion. The Director shall abide by Brevard County's policy, attached hereto as **Exhibit B** on background screening in determining if a person shall be disqualified from working/volunteering at the Complex.

Upon completion of the initial background screening, a re-screening at the same Level will occur at a minimum of every five years.

High Level (Level 1) Background screening includes the following:

- Brevard County Clerk of Courts E-Facts
- Fingerprinting (Florida Department of Law Enforcement and National Federal Bureau of Investigations Criminal check through [Volunteer and Employee Criminal History System](#))
- Department of Juvenile Justice check on individuals under the age of eighteen when applicable and allowed in lieu of fingerprinting

- National Sex Offender Public Website
- Reference Checks
- Prior employment check
- Education/Licensing verification (case-by-case)
- Driver's license check (case-by-case)
- Drug Testing (case-by-case)

**7. Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Contract shall be subject to copyright by the Contractor in the United States or any other country.

**8. Covenants against Assignment.** The Contractor, its successors or assigns, shall not assign any rights under this Contract nor allow same to be assigned by operation of law without express written approval of the County. The Contractor may not assign any right to use the Complex, any part thereof, or any right or privilege connected therewith, or to allow any other individual, group, or Contractor to occupy the Complex or any part thereof without prior written consent from the Area Manager. No fees or charges of any kind shall be levied by the Contractor for use of the Complex except direct costs as necessary for the operation of the Complex and provision of the approved public recreation program(s). Such fees or charges must be approved in advance by the County.

**9. Dissolution.** In the event the Contractor is dissolved or becomes inactive, all liabilities, and obligations owed to the County at that time shall be discharged in accordance with Chapter 617, Florida Statutes. Any County assets or equipment held by the Contractor upon condition requiring return must be returned in accordance with such requirements and the requirements of Chapter 617, Florida Statutes.

**10. E-Verify.** Contractor:

- A.** Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the term of the Contract; and
- B.** Shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term; and
- C.** Agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program.

- D. Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract
- E. .A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-verify program, the contractor hires or employs a person who is not eligible for employment.
- F. Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

**11. Emergencies.** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the County retains the right to immediately resume occupation, management, and maintenance of the Complex, to use the Complex to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the County.

**12. Entire Contract.** This Contract shall constitute the entire Contract between the Parties with respect to the matters addressed herein and supersedes any prior Contracts or understandings. Any prior understanding or representation of any kind, relating to the matters addressed herein, preceding the date of this Contract shall not be binding upon either party and is expressly terminated by the execution of this Contract.

**13. Florida Public Records Law.** Pursuant to Section 119.0701, Florida Statutes, a request to inspect or copy public records relating to this Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Contractor of the request and the Contractor shall provide the records to the County or allow the records to be inspected or copied within twenty-four hours (not including weekends or legal holidays) of the request so the County can comply with the requirements of Chapter 119, Florida Statutes, Florida Public Records Law. The Contractor may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from the County's public records custodian designated below.

If Contractor fails to provide the requested public records to the County within a reasonable time, the Contractor may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Section 119.10, Florida Statutes. Contractor's failure to comply with public records requests is considered a material breach of this Contract and grounds for termination. If Contractor claims certain information is exempt and/or confidential, it must cite to specific statutory provisions or case law in order to justify removal or redaction of said information.

Should the County face any legal action to enforce inspection or production of the records within the Contractor's possession and control, the Contractor agrees to indemnify the County for all damages and expenses, including attorney's fees and costs. The Contractor shall hire and compensate attorney(s) to represent the Contractor and County in defending such action. The Contractor shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12, Florida Statutes.

**If the Contractor has questions regarding the application of Chapter 119 Florida Statutes, to the Contractor's duty to provide Public Records relating to this Contract, contact the Custodian of Public Records at (321) 633-2046.**

**14. Governing Law.** This Contract shall be deemed to have been executed and entered into within the State of Florida and this Contract, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

**15. Illegal, Unlawful or Improper Use.** The Contractor shall not make any unlawful, immoral, improper, or offensive use of the Complex nor allow said Complex to be utilized for any purpose other than that hereinabove set forth. Failure of the Contractor to comply with this provision shall be considered a material breach of this Contract and subject same to immediate termination by the County, where upon the County shall be entitled to immediately re-enter and retake possession of the Complex and terminate this Contract.

**16. Improvements.** Any improvements or repairs, to the Complex by the Contractor must be requested in writing to the County, and mutually agreed upon by the County and the Contractor, with written permission granted by the Director, prior to any actual work. Said request shall state the party responsible for funding such improvements. The plans, specifications, and location for all improvements, structures, landscaping, and facilities made by the Contractor to the Complex shall be submitted in writing to and approved by the Director prior to the construction or installation of such improvement, structure, landscaping or facility. It is hereby mutually agreed and understood that any building, structure, or facility located thereon and permanently attached thereto shall become the property of the fee simple title holder.

**17. Indemnification and Insurance.**

**A. Brevard County Board of County Commissioners:** The Contractor agrees that it will indemnify and hold harmless the County from any and all liability, claims, damages, expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature, arising out of or connected with the use, occupation, management or control of the Complex or any improvements thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The Contractor agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the County in connection with the said facilities arising from the Contractor's activities and that it will satisfy, pay, and discharge any and all judgments

that may be entered against the County in any such action or proceeding. It is agreed by the parties hereto that specific consideration has been paid under this Contract for this indemnification and hold harmless provision.

The Contractor agrees to provide and maintain at all times during the term of this Contract, without cost or expense to the County, policies of insurance generally known as comprehensive general liability policies insuring the Contractor against any and all claims, demands, and causes of action whatsoever for injuries received and damage to property and any improvements thereon by the Contractor. Such policies of insurance shall insure the Contractor in the amount of not less than One Million Dollars per occurrence to cover any and all claims and costs arising in connection with any and all liability claims arising in connection with any particular accident or occurrence, and fire damage liability coverage with limits sufficient to provide for the replacement cost of any structure damaged due to fire and Sexual Abuse and Molestation coverage in the amount of One Million Dollars. The Parks and Recreation Department is to provide the Contractor with a replacement cost for the highest valued structure subject to this Contract. Said insurance policies shall provide that the County is named as an additional insured and shall be entitled to thirty day prior notice of any changes or cancellation in said policies.

The Contractor shall notify the County immediately in writing and by phone or email of any potentially hazardous condition existing on or about the premises utilized in conjunction of said activities. The Contractor shall provide the described insurance on policies and with insurers acceptable to the County. These insurance requirements shall not relieve or limit the liability of the Contractor. The County does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Contractor's interests or liabilities, but are merely minimums. A certificate of insurance indicating that the Contractor has coverage in accordance with the requirements of this Contract shall be furnished by the Contractor to Brevard County Parks and Recreation Department, South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32955.

**B. Brevard Public Schools:** The Contractor shall Indemnify and hold the School Board of Brevard County, herein after referred to as "Brevard Public Schools (BPS)"; 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 Contractor by BPS pursuant to this Contract and which occurs during the course of any program or activity sponsored by the Contractor. This Contract includes claims of intentional discriminatory acts that occur in the course of use or operation. This Contract to indemnify and hold harmless includes an obligation to indemnify and hold BPS harmless for liability for any negligence on the part of BPS. The Contractor's promise to indemnify and hold harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgment, 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 BPS to perform services on their behalf. BPS shall be named as an additional insured and shall be entitled to thirty day prior notice of any changes or cancellation in said policies of insurance. A copy of the contract with the agent or third-party shall be provided to the Risk Management Department for BPS no later than ten days after the contract is signed.

**18. Independent Contractor.** The Contractor shall perform the terms and conditions of this Contract as an independent contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall, in any way, be construed to constitute the Contractor or any of its agents or employees as the representative agents or employees of the County.

**19. Modification.** No modification of this Contract shall be binding on the County or the Contractor unless reduced to writing and signed by a duly authorized representative of County and the Contractor.

**20. Music Performance.** The Contractor shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Contractor shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Contract. The Contractor agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.

**21. Notice.** Notice under this Contract shall be given to the County by mailing written notice postage prepaid, to Parks and Recreation Department, South Area Parks Operations, 1515 Sarno Road, Building A, Melbourne, Florida 32955; and notice shall be given to the Contractor by mailing written notice, postage prepaid, to Greater West Melbourne Athletic Association, Kevin D. Henderson, President, 731 Beacon Street North West, Palm Bay, Florida 32907.

**22. Obligations of the County.**

The County shall close/secure the Complex, when necessary and/or possible, during inclement weather and shall make every effort to notify Contractor prior to closure.

**23. Obligations of the Contractor.**

**A.** Provide and administer adequate personnel to supervise all activities sponsored or sanctioned by the Contractor, which will take place at the Complex.

**B.** The Contractor shall be solely responsible for the proper safety, supervision, training and equipping of all participants.

**C.** Provide Area Manager or designee a list of Contractor's officers, designated liaison, coaches, assistant coaches, referees and all volunteers working for twenty or more hours within a calendar year, whether for compensation or as a volunteer upon



execution of this Contract. Any changes in the officers and/or liaison during the year shall be provided to the Area Manager or designee within ten days of the change.

**D.** Submit a monthly report of attendance and volunteer hours, due the first working day of the following month to the Area Manager or designee.

**E.** Issuance of keys may be authorized by the Area Manager to provide access to Complex. If a key is lost by the Contractor, the Contractor may be responsible, at the County's discretion, for all costs associated with the replacement of the key(s) and lock(s) as necessary, as well as all repairs and/or replacement of equipment and materials needed due to the loss of the key(s). These costs include but are not limited to personnel, materials, and equipment. The Contractor will be responsible for all costs created by inappropriate use of key(s) including but not limited to light fees, etc.

**F.** Provide a portable lightning detector at each Complex utilized.

**G.** Membership in the Contractor must be open to the public without regard to race, color, religious creed, national origin, ancestry, age, gender, marital status, or disability.

**H.** The Contractor may establish reasonable membership dues, registration fees, admission fees or donations to help defray the expenses of the Contractor.

**I.** When providing athletic contests or leagues they must adopt an "all play rule" whereby every participant has the opportunity to compete in each contest or league game.

**24. Personal Property.** All personal property housed or placed at a County facility shall be at the risk of the Contractor, and the County shall have no liability for any damage or loss to any personal property located thereon for any cause whatsoever. The Contractor agrees and understands that the County does not and shall not carry liability, fire, or theft insurance on the operation of this Complex to cover the Contractor's interest therein.

The Contractor will retain title to all personal property purchased by the Contractor and placed at the Complex, unless otherwise agreed to by the parties. The Contractor will obtain approval from the Area Manager prior to placing any personal property or equipment at the Complex. All personal property belonging to the Contractor will be marked in a manner consistent with the character of the property.

**25. Public Entity Crimes.** A person or affiliate who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor,

supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six months from the date of being placed on the convicted vendor list.

**26. Repairs and Maintenance.** The Contractor shall keep the Complex clean and free of litter, rubbish, or any obstacles that are generated by the Contractor and shall notify County of maintenance, safety, and/or repair concerns or problems. The Contractor is responsible for any damage to the Complex, or any improvements, furnishings, equipment and fixtures utilized in connection therewith arising out of or connected with the Contractor's use, occupation, management or control of the Complex. The County shall provide repairs and maintenance of the Complex. The parties shall abide by and perform any and all tasks and conditions set forth in this Contract. The County and the Contractor further agree to maintain the Complex in good condition during the period of their respective use.

**27. Responsibility.** The Contractor's President shall be responsible for ensuring the Contractor is abiding by the terms of this Contract. The Area Manager shall be responsible for assuring the contents of this Contract are properly applied.

**28. Right of Entry by County.** The County or its agents may at any time enter in and on the Complex for the purpose of inspection of same and performing such other duties as are required by the terms of this Contract and the rules, regulations, ordinances and laws of any government body.

**29. Right to Audit Records.** The Contractor shall prepare an annual financial statement and shall submit same to the Area Manager ninety days prior to expiration of contract.

In performance of this Contract, the Contractor shall keep books, records, and accounts of all activities related to this Contract in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Contractor in conjunction with this Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative of the County. The Contractor shall retain all documents, books and records for a period of five years after termination of this Contract, unless such records are exempt from section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by or provided to the Contractor by the County in connection with this Contract are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the County in a format compatible with the information technology systems of the County.

The Contractor shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Contract and following termination of the Contract if the Contractor does not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Contract, the Contractor may transfer at no cost to the County, all public records in

possession of the Contractor. If the Contractor transfers all public records to the County upon termination of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

**30. Severability.** If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.

**31. Statutes, Laws, Rules and Regulations.** The Contractor's use of the Complex will be in accordance with all applicable laws, rules, regulations, policies and procedures approved by the Department and/or the County including but not limited to: Department Policy PRP-1 Prohibiting Smoking at Brevard County Youth Athletic Facilities, PRD-4 Background Screening for Volunteers and Contracted Services, and PRP-5 Sponsor Sign Policy and prescribed safety rules and regulations. The County reserves the right to disapprove any and all activities held at the Complex, which may be in conflict with the Department's and/or the County's Policies and Administrative Orders, and agrees to furnish the Contractor with a copy of such rules, regulations, policies, procedures, and amendments thereto.

It shall be the Contractor's and the County's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable

**32. Successors in Interest.** This Contract and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.

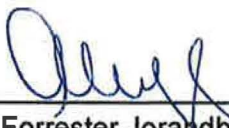
**33. Termination.** This Contract may be terminated by either party upon thirty days written notice to the other party. When it is determined to be in the best interest of the County, the Parks and Recreation Department Director may terminate this Contract upon written notice to the Contractor. Upon termination of this Contract, the Contractor shall have fifteen days within which to remove any personal property from any Complex. Any personal property not removed within said fifteen day period shall become the property of the County.

**34. Unauthorized Alien Workers.** Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act "INA"). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Contract by the County

**35. Venue.** Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

In Witness Whereof, the parties hereto have hereunto set their hands and seals on the day and year first above written.

Reviewed for legal form and content:


  
\_\_\_\_\_  
Abigail Forrester Jorandby  
Assistant County Attorney

**Board of County Commissioners  
of Brevard County, Florida**

By:   
\_\_\_\_\_  
Hector J. Lopez-Acevedo,  
Assistant Parks & Recreation Director

Date: 3/13/2019

Witnesses:

  
\_\_\_\_\_  
*Vanessa Bethauser*  
\_\_\_\_\_  
*Vanessa Bethauser*

**Great West Melbourne Athletic Association,  
Inc.**

By:   
\_\_\_\_\_  
Kevin D. Henderson, President

Date: 3/12/19

## **Exhibit A**

The Contractor shall have non-exclusive use of the football, softball and baseball fields and the community center gym at Max K. Rodes Park for its approved regular scheduled games, events and practices.

## Exhibit B



BOARD OF COUNTY COMMISSIONERS

### ADMINISTRATIVE ORDER

NUMBER: AO-05  
CANCELS: 04/24/15  
APPROVED: 06/12/18  
ORIGINATOR: Human Resources  
REVIEW: 06/12/21

Title: Background Investigation Checks

#### I. PURPOSE AND SCOPE

To establish a consistent, county-wide procedure for conducting background investigation checks.

#### II. DEFINITIONS AND REFERENCES

Applicant – An external applicant or volunteer being considered for a position or a current employee being considered for a position with a higher security level as the result of a promotion, transfer or demotion.

- B. At-Risk Population- Children, elderly, disabled, and those whom cannot defend themselves. Example of settings in which individuals come into contact with at-risk populations include, but are not limited to:
- Daycare: senior citizen centers and community day programs for children.
  - Group Home: placements for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
  - Program activities involving children on school property.
  - Shelters: homeless, domestic violence or special needs emergency shelters.
  - Youth development programs.
  - Volunteer programs for the elderly or individuals with disabilities; such as, Meals on Wheels or other community/volunteer programs.
  - Library areas/programs designated for children.
  - Park areas/programs designated for children.
- C. Background Investigation Handbook – a handbook with detailed information about how to complete and interpret the background checks.
- D. Background Checklist – a form used to track the results of the background checks performed by the Department/Office.

- E. Conviction – defined as a law violation where there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

NOTE: A "yes" answer to the question of law violation on the application will not automatically bar the applicant from employment. The nature, job-relatedness, severity and date of the offense in relation to the position for which they are applying will be considered.

- F. Recertification – Frequency which each Department/Office reinvestigates each employee's or volunteer's criminal history.

G. **SECURITY LEVELS:**

**High Level (Level I)** – Applies to an employee or volunteer who has unsupervised access and/or contact with individuals identified as being in the at-risk population.

**Moderate Level (Level II)** – Applies to an employee or volunteer who has supervised access and/or contact with individuals identified as being in the at-risk population.

**Low Level (Level III)** – All other employees or volunteers who do not fit into the High or Moderate security levels.

- H. VECHS – an acronym for the Volunteer & Employee Criminal History System at the Florida Department of Law Enforcement (FDLE). The VECHS program agreement allows Brevard County to submit state and national checks for employees and volunteers, as needed.
- I. F.S. 112.011 – Felon; removal of disqualifications for employment, exceptions.
- J. F.S. 943.04351 – Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

**III. RESPONSIBILITIES**

- A. Each Department/Office Director shall establish a background investigation check procedure which ensures that the guidelines in this Administrative Order are met.
- B. Each Department/Office will utilize the guidelines in this Administrative Order or will adhere to statutory/contractual requirements, whichever is more stringent.
- C. Each Department/Office shall be responsible for verifying that each applicant

meets the requirements for the job, including educational and/or licensing verification, driver's license check.

- D. Each Department/Office shall be responsible for checking and documenting a total of three (3) of the applicant's employment and/or personal references. Document if the applicant has insufficient work history (i.e.; a student with no experience or someone returning to the workforce after a long absence) or is a volunteer. Due diligence must be used in obtaining these references, but if no response is received, documentation should be made of what efforts were made. Reference checks are not mandatory for those temporary employees hired on a seasonal basis.

The Background Investigation Handbook has detailed instructions and reference forms to be used in checking these references.

- E. Each Department/Office shall perform the required minimum criminal background investigation checks at the appropriate security level for applicants under final consideration and document the results on the Background Checklist, which shall be provided to the Office of Human Resources with the background documents.

1. High-Level Security Check (Level I):

- Fingerprints – submit fingerprints to FDLE under the VECHS agreement using digital fingerprint machine or using the fingerprint card provided for FDLE and National FBI criminal investigation check.
- Brevard County Clerk E-Facts: [www.brevardclerk.us](http://www.brevardclerk.us)

2. Moderate-Level Security Check (Level II):

- FDLE: <https://web.fdle.state.fl.us/search/app/default>
- Brevard County Clerk E-Facts: [www.brevardclerk.us](http://www.brevardclerk.us)
- National Sex Offender Public Website: [www.nsopw.gov](http://www.nsopw.gov)
- Out-of-State criminal checks based on past seven (7) years address history (on-line checks may be done, if available), or alternatively a national background check.

3. Low-Level Security Check (Level III):

- Brevard County Clerk E-Facts: [www.brevardclerk.us](http://www.brevardclerk.us)
- National Sex Offender Public Website: [www.nsopw.gov](http://www.nsopw.gov)
- Florida Department of Corrections: [www.dc.state.fl.us](http://www.dc.state.fl.us)
- Out-of-Area criminal checks based on past two (2) years address history (on-line checks may be done, if available).

- F. Applicants under final consideration for positions classified as high security level shall be subject to the following guidelines for criminal background checks.



Consistent with F.S. 112.011, a person shall not be disqualified from employment by the County solely because of a prior conviction for a crime. However, a person may be denied employment by the County by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

**1. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to any high level security position, irregardless of when it occurred, and will disqualify an applicant from further consideration:**

- Child Abuse, Neglect or Abandonment
- Extortion
- Extreme Violence (Aggravated Assault/Aggravated Battery, Murder, Attempted Murder, Vehicular Homicide)
- False Imprisonment
- Hate Crime
- Indecent Exposure if Sexual in Nature
- Kidnapping
- Manslaughter
- Child Pornography
- Illegal Possession of Guns or Weapons
- Robbery
- Sale of Controlled Substance
- Sexual Offense (Lewd and Lascivious-Sexual Battery)
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

**2. A prior conviction of any of the following criminal offenses, if a felony or first degree misdemeanor, is considered to be directly related to any high level security position if it occurred within five (5) years of the date of the background check, and will disqualify an applicant from further consideration:**

- Battery/Assault
- Domestic Violence
- Misdemeanor Drug and/or Paraphernalia
- Resisting Arrest with Violence
- Sale of Alcohol or Tobacco to a Minor
- Contributing to the Delinquency of a Minor
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

**A prior conviction of one of the above criminal offenses, if a felony or first degree misdemeanor, that occurred beyond five (5) years of the date of the background check, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and the applicant is disqualified from further consideration.**

- 3. A prior conviction for any of the following criminal offenses, if a felony or a first degree misdemeanor, shall be carefully reviewed by the appointing authority on a case-by-case basis to determine if it is directly related to a high security level position and if the applicant is disqualified from further consideration:**

- Disorderly Conduct/Trespassing
- Driving While Under the Influence (DUI), one incident only (more than one must show proof of rehabilitation)
- Petty Theft
- Worthless Checks
- Other Crimes
- Any Offense of similar nature and severity to those listed above (contact the County Attorney's Office if there is a question)

- G. When determining whether a prior criminal conviction for any of the criminal offenses listed in Section F above are directly related to a high, moderate or low level security position, an appointing authority shall take the following factors into consideration:**

- The classification of the crime as a felony or first degree misdemeanor
- The relationship between the incident and the type of employment or service that the applicant will provide.
- The nature, severity, number, and consequences of the incidents disclosed.
- The amount of time elapsed since the incident(s) occurred.
- The applicant's efforts and success at rehabilitation.
- The age of the applicant at the time of the incident.

If there is any question about whether the criminal offense is directly related to the position, contact the County Attorney's Office.

- H. After the background investigation checks are satisfactorily completed, the Department/Office can initiate the request for the applicant to be hired to a paid position or coordinate a start date for a volunteer placement.**

**IV. RESERVATION OF AUTHORITY**

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.

 6/12/18  
Frank Abbate, County Manager      Date