

**INTERLOCAL AGREEMENT BETWEEN
THE VILLAGE OF PALM SPRINGS
AND
THE SCHOOL BOARD OF PALM BEACH COUNTY
FOR THE MUTUAL USE OF RECREATIONAL FACILITIES**

This Interlocal Agreement is made this 21ST day of APRIL, 2004, between the Village of Palm Springs, a municipal corporation of the State of Florida, ("Village") and the School Board of Palm Beach County, Florida, a corporate body politic pursuant to the Constitution of the State of Florida ("Board"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies, as defined therein, to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, the Village and Board recognize the benefits to be derived by utilizing each other's facilities thereby minimizing the duplication of facilities; and

WHEREAS, the Village and Board desire the ability to use the facilities of the other.

NOW THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

1. Recitals.

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Purpose.

The purpose of this Agreement is to enable the Board and Village to utilize each other's recreational facilities and provide a procedure for authorizing the use of the Board's recreational facilities by Village-affiliated recreation groups and organizations that have been approved by the parties.

3. Definitions.

A. "Board Facilities" and "Board Facility" mean facilities owned or operated by the Board that are made available for public use by the Board and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "Board Facilities" and "Board Facility" shall include, gymnasiums; playgrounds; swimming pools; tennis, racquetball and basketball courts; athletic fields; and tracks.

B. "Village Facilities" and "Village Facility" mean facilities owned or operated by the Village that are made available for public use by the Village and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "Village Facilities" and "Village Facility" shall include, parks; wrestling rooms; gymnasiums; pavilions; community center; playgrounds; swimming pools; tennis, racquetball and basketball courts; and athletic fields.

C. "Village Manager" means the Village Manager of the Village of Palm Springs, Florida or his/her designee.

D. "Facilities" means the Board Facilities and Village Facilities.

E. "Priority of Use" means the priority of uses when there are conflicting requests for the use of a Facility. For Board Facilities, the Priority of Use shall be as follows:

1. Board activities and programs or Board Facility lease agreements;
- and
2. County activities and programs pursuant to the Interlocal Agreement entered into by the Board and Palm Beach County dated October 15, 2003;

3. Village or Village Recognized Sports Provider activities and programs pursuant to this Agreement.

For Village Facilities, the Priority of Use shall be as follows:

1. Village or Village Recognized Sports Provider activities and programs or Village facility rental agreements; and

2. Board activities and programs pursuant to this Agreement.

F. "Recognized Sports Provider" mean an organized recreation group or organization identified in the attached Exhibit "A", which may be amended or supplemented from time to time upon the mutual agreement of the Board's Chief Operating Officer and the Village Manager, without formal amendment hereto.

4. Use of Facilities by the Parties.

A. The Board agrees to make the Board Facilities available for use by the Village according to the Priority of Use at no cost or expense to the Village, except as otherwise provided for in this Agreement. The Village's use of the Board Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the Board's rules, regulations and policies governing the use of the Board Facilities; (iii) any grant or bond obligations pertaining to the use of any of the Board Facilities; and (iv) all applicable local, state and federal laws.

B. The Village agrees to make available the Village Facilities for use by the Board according to the Priority of Use at no cost or expense to the Board, except as otherwise provided for in this Agreement. The following public schools are eligible to request use of Village Facilities pursuant to this Agreement:

1. Palm Springs Elementary School

2. C.O. Taylor/Kirkland Elementary School

3. Jefferson Davis Middle School

The Board's use of the Village Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the Village's rules, regulations and policies governing the use of the Village's Facilities; (iii) any grant or bond obligations pertaining to the use of any of the Village Facilities; and (iv) all applicable local, state and federal laws.

C. The Village shall submit all requests for use of the Board Facilities in writing on the form attached hereto as Exhibit "B" to the Principal responsible for the management of the Board Facility or his or her designee no less than thirty (30) days prior to the date that the Village desires to use the Board Facility. The Board shall be responsible for ensuring that a written response to the request is provided to the Village within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response. If the Board Facilities to be used by the Village include a football stadium, the Board shall provide the Village with an estimate of the Stadium Tax required to be remitted to the Board pursuant to Board Policy 6.21, which is attached hereto and incorporated herein as Exhibit "C". The amount of the Stadium Tax shall be based on the per ticket charge in effect at the time of the use of the Board Facility and shall be subject to adjustment based on actual documented costs and number of tickets sold for Stadium Tax purposes.

D. The Board shall submit all requests for use of the Village Facilities in writing on the form attached hereto as Exhibit "B" to the Village Manager, no less than thirty (30) days prior to the date that the Board desires to use the Village Facility. The Village shall be responsible for ensuring that a written response to the request is provided to the Board within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response.

E. The Board and Village acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. The Board and Village agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of

their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

F. Without waiving the right to sovereign immunity, the parties acknowledge that they are self-insured for commercial general liability and automobile liability in the amounts specified in Florida Statutes Section 768.28, as may be amended from time to time. In the event either party maintains third-party commercial general liability or business automobile liability insurance in lieu of exclusive reliance on selfinsurance, the party maintaining the third-party insurance shall maintain limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limit for bodily injury or property damage and shall add the other party as an additional insured to the commercial general liability policy, but only with respect to negligence arising out of this Agreement that is not a result of the other party's negligence. The additional insured endorsement for the Village shall read "Village Council of Palm Springs, Florida, its Officers, Employees and Agents". The additional insured endorsement for the Board shall read "The School Board of Palm Beach County, Florida, its Officers, Employees and Agents". The parties agree additional insured endorsements shall provide coverage on a primary basis. Claims-bill tailored coverage shall not be considered third-party liability coverage for purposes of this Agreement. The parties agree to maintain or to be selfinsured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. Each party agrees to provide the other party with an affidavit or certificate of insurance evidencing insurance, selfinsurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the abovereferenced coverages. Compliance with the requirements of this paragraph shall not relieve the parties of their liability and obligations under this Agreement.

G. Each party agrees to provide adequate supervision of its own activities to prevent bodily harm to the users and damage to the Facilities, taking into consideration the types of activities planned, when using the other's Facilities. When aquatic facilities will be included in the Facilities to be utilized, the party using the Facility shall provide supervisors certified in Lifeguard Training in addition to any other supervision required hereunder.

H. In the event the Facilities are damaged, the party using the Facilities of the other party shall promptly notify the other party in writing of the damage and shall reimburse the other party for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs.

I. The Facilities shall be surrendered by the party using the Facilities of the other party in the same condition as they were accepted and shall cause to be removed from the Facilities all waste, garbage and rubbish resulting from such party's use of the Facilities.

J. In the event the Board Facility being used is a football stadium, the Village shall remit the required Stadium Tax to the Board in accordance with the requirements of this Agreement within sixty (60) days of the date of use.

K. The Board acknowledges and agrees that the Village may charge a fee for:

1. Use of the Village's pool, including the water park, for summer and after-school programs;

2. Use of the Village's picnic pavilions on holidays and weekends;

5. Use of Board Facilities by Village Recognized Sports Providers.

A. The Board agrees to make the Board Facilities available for use by the Village Recognized Sports Providers at no cost or expense to the Village Recognized Sports Providers according to the Priority of Use, except as otherwise provided for in this Agreement. Use of the Board Facilities by the Village Recognized Sports Providers shall depend on availability and shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the Board's rules, regulations and policies governing the use of Board Facilities; (iii) any bond or grant obligations pertaining to the use of the Board Facilities; and (iv) all applicable local, state and federal laws.

B. Prior to being granted access to any of the Board Facilities, each Village Recognized Sports Provider shall be required to obtain a Facility Use Permit from the Village. The Facility Use Permit shall, at a minimum, require the Village Recognized Sports Provider to:

1. provide proof of insurance for such coverages and amounts as may be required by the Board's Director of Employee Benefits and Risk Management when Board Facilities are to be utilized and name the Board as an additional insured;

2. protect, defend, reimburse indemnify and hold the Board, its agents, employees and elected officers harmless from and against all claims, liability, expenses, costs, damages and causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising from or in anyway connected to the Village Recognized Sports Provider's use of the Board Facilities;

3. provide adequate supervision of its own activities to prevent bodily harm to the users or damage to the facilities, taking into consideration the types of activities planned;

4. return the Board Facilities in the same condition as they were accepted and to remove all waste, garbage and rubbish resulting from the Village Recognized Sports Provider's use of the Board Facilities;

5. notify the Board of any damage to the Board Facilities resulting from the Village Recognized Sports Provider's use of the Board Facilities and reimburse the Board for the actual costs to repair the damage; and

6. pay a Stadium Tax to the Board pursuant to Board Policy 6.21, if applicable.

C. The Facility Use Permit issued by the Village shall also indicate that the Facility Use Permit may be revoked or suspended by the Village and the Board may deny access to the Board Facilities for failure to comply with the terms and conditions of the Facility Use Permit.

D. The Village Recognized Sports Providers shall be required to submit all requests for use of the Board Facilities in writing in the form attached hereto as Exhibit "B" to the Village Manager no less than forty five (45) days prior to the date the Village Recognized Sports Provider desires to use the Board Facility. The Village Manager shall coordinate scheduling of the use of the Board Facility with the Principal responsible for the management of the Board Facility or his or her designee. The Board shall be responsible for ensuring that a written response to the request is provided to the Village Manager within

fifteen (15) days of the date of the Village Manager's request. In the event a request is denied, the reason for denial shall be stated in the written response.

E. Notwithstanding any provision of this Agreement to the contrary, neither party shall be obligated to make their Facilities available for use by the other for tournaments or any events where admission or concession fees or charges will be collected or imposed.

6. Maintenance/Repair of Facilities.

The parties acknowledge and agree that either party may deny a request for use of a Facility to perform maintenance or repairs to the Facility.

7. Notification of Responsibilities under Agreement.

The Board agrees to notify the Board's Principals of the terms and conditions of this Agreement and the Board's commitment to make the Board Facilities available to the Village and Village Recognized Sports Providers in accordance with the Priority of Use.

8. Dispute Resolution.

In the event an issue arises which cannot be resolved between the Board's Principal and the Village Manager regarding the use or availability of a Facility, the dispute shall be referred to the Board's Chief Operating Officer and the Assistant Director, Community Services Department who shall both make a good faith effort to resolve the dispute.

9. Acceptance of Facilities.

Neither party shall be required to make any improvements or repairs to the Facilities as a condition of use of the Facilities by the other party or Village Recognized Sports Providers. The parties and Village Recognized Sports Providers shall accept the Facilities in their "As is", "Where is" condition. The parties acknowledge and agree that neither party has made any warranties or representations to the other party regarding the Facilities, including, but not limited to, any representations or warranties regarding the suitability of the Facilities for use by the other party or Village Recognized Sports Providers.

10. License.

Notwithstanding any provision of this Agreement to the contrary, the use of the Facilities by either of the parties or the Village Recognized Sports Providers shall only amount to a license to use the Facilities on a non-exclusive basis, which license shall be revocable by the party licensing the use for any reason whatsoever. The parties agree that

nothing in this Agreement shall be construed as granting either party or the Village Recognized Sports Providers any title, interest or estate in the Facilities.

11. Default.

The parties agree that, in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure ~~the~~ default within the thirty (30) day cure period, the nondefaulting party shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement and seek damages, if any.

12. Termination.

Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party: (i) without cause upon thirty (30) days prior written notice to the other party or (ii) with cause upon the expiration of the thirty (30) day cure period provided for in Section 11 above.

13. Annual Appropriation.

Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.

14. Notice.

All notices required to be given under this Agreement shall be deemed sufficient to each party when delivered by United States Mail to the following:

IF TO VILLAGE:

Village Manager, Village of Palm Springs
226 Cypress Lane
Palm Springs, Florida, 33461

IF TO BOARD:

School District of Palm Beach County
Director, Real Estate Services Department
3318 Forest Hill Boulevard
West Palm Beach, Florida 33406-5813

15. Governing Law and Venue.

This Agreement shall be construed by and governed by the laws of the State of Florida. All legal action necessary to enforce the Agreement will be held in Palm Beach County.

16. Subordination to Bond and Grant Obligations.

The parties acknowledge that certain Facilities may be subject to bond covenants and restrictions or grant obligations and agree that this Agreement shall be subject and subordinate to any such covenants, restrictions and obligations. Notwithstanding any provision of this Agreement to the contrary, the parties shall not be obligated to make any Facility available for use by the other party or Village Recognized Sports Providers in a manner which either party has determined, in its sole discretion, would be contrary to any of its bond or grant obligations, including, but not limited to, making any of the Facilities available at no cost when such an action would be contrary to either party's bond or grant obligations.

17. Equal Opportunity Provision.

The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

18. Captions.

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

19. Severability.

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

20. Entirety of Agreement.

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.

21. Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

22. Amendment.

Except as otherwise provided for in this Agreement, this Agreement may be modified and amended only by written instrument executed by the parties hereto.

23. Waiver.

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

24. Construction.

Neither party shall be considered the author of this Agreement since the parties have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

25. Filing.

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County pursuant to Section 163.01(11), Florida Statute.

26. Effective Date/Term.

This Agreement shall become effective when signed by the both the parties, and filed with the Clerk of the Circuit Court in and for Palm Beach County. The term of this Agreement shall be for a period of one (1) year and shall be automatically renewed up to four (4) additional consecutive one (1) year terms, unless either party provides a written notice of non-renewal to the other party thirty (30) days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day and year first above written.

VILLAGE OF PALM SPRINGS,

By: *John M. Davis*
John M. "Mike" Davis, Mayor

ATTEST:

Irene L. Burroughs
Irene Burroughs, Village Clerk

Date: 3-11-04

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

David J. [Signature]
Village Attorney

SCHOOL BOARD OF
PALM BEACH COUNTY, FLORIDA

By: *Thomas E. Lynch*
Thomas E. Lynch, Chairman

ATTEST:

Arthur C. Johnson
Arthur C. Johnson, Ph.D.
Superintendent of Schools

Date: 4/21/04

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Blair [Signature] 3/15/04
School Board Attorney

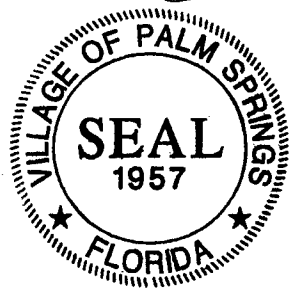


EXHIBIT "A"

Village Recognized Sports Providers

1. Village of Palm Springs Leisure Services Programs

EXHIBIT "C"
BOARD POLICY 6.21

FOOTBALL STADIUM TAX

1. The Superintendent shall designate a percentage of all admissions sold to events held on the senior high or full secondary school football fields of Palm Beach County Schools which will be charged and placed in a "Stadium Tax" account in the internal accounts of the school.

a. This tax will not apply to the proceeds from concessions and printed programs. The tax will apply to all schools using a senior high school or a full secondary school football field. Season tickets sold will include the applicable tax for the number of events, which require the stadium tax. This tax is to be made known to the public by signs which state the amount of the stadium tax. Such signs shall be displayed prominently at each ticket booth.

b. Expenditures from the stadium tax account shall be made only after approval by the area superintendent of an application submitted on the prescribed form. If approved the work order will either be implemented by the plant planning department or plant planning will approve the procedures suggested by the school. This fund will be utilized for general upkeep of the football field.

Authority: 120.53, 230.22(2), FS
Implemented: 120.53, 230.22(2), FS
History: 1336; Revised: 4/6/83

