

**INTERLOCAL AGREEMENT BETWEEN THE
TOWN OF JUPITER AND
THE SCHOOL BOARD OF PALM BEACH COUNTY
FOR USE OF FACILITIES AT
JUPITER ELEMENTARY SCHOOL**

THIS AGREEMENT, entered into this ____ day of _____, 2007 between THE TOWN OF JUPITER, a municipal corporation of the State of Florida, (“TOWN”) 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, it is the intent of Section 163.01, Florida Statutes, known as the “Florida Interlocal Cooperation Act of 1969”, to encourage cooperation between local government units in the provision of services and facilities for the needs 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 purpose of this Agreement is to enable TOWN and BOARD to utilize the facilities of the other and provide a procedure for authorizing such use; and

WHEREAS, TOWN and BOARD recognize the need and benefit for the TOWN to utilize the BOARD facilities thereby maximizing the availability of said facilities; and

WHEREAS, BOARD and TOWN recognize the need and benefit for the Jupiter Elementary school to utilize the TOWN facilities thereby maximizing the available of said facilities; and

WHEREAS, the TOWN has agreed to provide up to \$78,485 for field renovations at Jupiter Elementary School if the TOWN is successful in obtaining a grant.

NOW THEREFORE, for and in consideration of the mutual benefits herein contained, the parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. For purposes of this Agreement, the following definitions are provided:
 - A.
 - a. "BOARD Facilities" and "BOARD Facility" mean the recreational fields at the Jupiter Elementary School ("School") site that are made available for TOWN use by the BOARD, excluding times when the BOARD Facilities are leased, licensed or under the contractual control of others. The terms "BOARD Facilities" and "BOARD Facility" specifically exclude all other facilities at the Jupiter Elementary School.
 - b. "TOWN Facilities" and "TOWN Facility" mean the recreational amenities at the TOWN's Community Center that are made available to the School, but shall exclude all the offices, meeting rooms, and other facilities at the Community Center unless specifically requested by the School in writing and agreed to by the TOWN Manager in writing and all its recreational amenities that are made available to the School.
 - B. "Priority of Use" means the priority of uses when there are conflicting requests for the use of the BOARD Facility.
 1. BOARD activities and programs;
 2. BOARD Facility leases of the BOARD Facility
 3. County activities and programs pursuant to the Interlocal Agreement entered into by the BOARD and Palm Beach County dated October 15, 2003; and
 4. TOWN or TOWN Recognized Provider activities and programs pursuant to this Agreement.
 - C. "TOWN Recognized Provider" means those organized groups and organizations 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 TOWN'S Parks and Recreation Director without formal amendment hereto.
 - D. "Priority of Use" means the priority of uses when there are conflicting requests for the use of the TOWN Facility.

1. TOWN activities and programs;
 2. TOWN Facility leases of the TOWN Facility.
 3. BOARD activity and Programs
3. The BOARD and the TOWN may place reasonable time period restrictions with respect to the use of their respective Facilities and shall permit use of their Facilities pursuant to the following provisions:
- A.
- a. BOARD shall make the BOARD Facilities available for use by the TOWN after school and on weekends and holidays according to the Priority of Use at no cost or expense to the TOWN, except as otherwise provided for in this Agreement. The TOWN'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. TOWN shall make the TOWN Facilities available 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 BOARD's use of TOWN Facilities shall be subject to and accordance with: (i) the terms and conditions of this Agreement; (ii) the TOWN's rules, regulations and policies governing the use of the TOWN's Facilities; (iii) any grant or bond obligations pertaining to the use of any of the TOWN Facilities; and (iv) all applicable local, state, and federal laws.
- B.
- a. The TOWN shall submit all requests for use of the BOARD Facilities in writing in the form attached hereto as **Exhibit "B"** to the Principal of Jupiter Elementary School or her or his designee no less than fifteen (15) days prior to the date that the TOWN desires to use the BOARD Facility. The BOARD shall be responsible for ensuring that written response to the request is provided to the TOWN within five (5) 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.

b. The BOARD shall submit all requests for use of the TOWN Facilities in writing in the form attached hereto as **Exhibit "B"** to the Recreation Director for the TOWN of Jupiter or her or his designee no less than fifteen (15) days prior to the date that the BOARD desires to use the TOWN Facility. The TOWN shall be responsible for ensuring that written response to the request is provided to the BOARD within five (5) 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.

C. The BOARD and TOWN 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 TOWN 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.

D. 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 self-insurance, the party maintaining the third-party insurance shall maintain limits of not less than Two Hundred Thousand Dollars (\$200,000) 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 TOWN shall read "The TOWN of Jupiter, a municipal corporation of the State of 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 self-insured 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, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above-referenced coverages. Compliance with the requirements of this paragraph shall not relieve the parties of their liability and obligations under this Agreement.

E.

a. The TOWN agrees to use reasonable care in the supervision of its own activities in an effort to prevent bodily harm to the users and damage to the BOARD Facilities, taking into consideration the types of activities planned.

b. The BOARD agrees to use reasonable care in the supervision of its own activities in an effort to prevent bodily harm to the users and damage to the TOWN Facilities, taking into consideration the types of activities planned.

F.

a. In the event the BOARD Facilities are damaged as a result of the sole negligence of the TOWN's use, the TOWN shall promptly notify the BOARD in writing of the damage and shall reimburse the BOARD for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs supported by documentation of the costs expended by the BOARD for repair.

b. In the event the TOWN Facilities are damaged as a result of the sole negligence of the BOARD's use, the BOARD shall promptly notify the TOWN in writing of the damage and shall reimburse the TOWN for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs, supported by documentation of the costs expended by the TOWN for repair.

G.

a. The BOARD Facilities shall be surrendered by the TOWN in the same condition as they were accepted and shall cause to be removed from the BOARD Facilities all waste, garbage and rubbish resulting from the TOWN's use of the BOARD Facilities.

b. The TOWN Facilities shall be surrendered by the BOARD in the same condition as they were accepted and shall cause to be removed from the TOWN Facilities all waste, garbage and rubbish resulting from the BOARD's use of the TOWN's Facilities.

4. TOWN Recognized Providers shall use the BOARD Facilities pursuant to the following provisions:

A. The BOARD agrees to make the BOARD Facilities available for use by the TOWN Recognized Providers after school and on weekends and holidays at no cost or expense to the TOWN Recognized Providers according to the Priority of Use, except as otherwise provided for in this Agreement. Use of the BOARD Facilities by the TOWN Recognized 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 TOWN Recognized Provider shall be required to obtain a Facility Use Permit from the TOWN. The Facility Use Permit shall, at a minimum, require the TOWN Recognized 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 and the TOWN as additional insureds;
 2. execute an indemnification agreement which requires the TOWN Recognized Provider to protect, defend, reimburse, indemnify and hold the BOARD and the TOWN, their 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 TOWN Recognized Provider's use of the BOARD Facilities;
 3. provide adequate supervision of its own activities to prevent the personal injury, bodily harm, or death to the users or damage to the BOARD 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 TOWN Recognized Provider's use of the BOARD Facilities; and
 5. notify the BOARD in writing of any damage to the BOARD Facilities resulting from the TOWN Recognized Provider's use of the BOARD Facilities and reimburse the BOARD for the actual costs to repair the damage.
- C. The Facility Use Permit issued by the TOWN shall also indicate that the Facility Use Permit may be revoked or suspended by the TOWN at any time with or without cause, and that 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 TOWN Recognized 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 TOWN'S Parks and Recreation Director no less than

fifteen (15) days prior to the date the TOWN Recognized Provider desires to use the BOARD Facility. The TOWN'S Parks and Recreation Director shall coordinate scheduling of the use of the BOARD Facility with the Principal of Jupiter Elementary School or her or his designee. The BOARD shall be responsible for ensuring that a written response to the request is provided to the TOWN'S Parks and Recreation Director within five (5) 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. Notwithstanding any provision of this Agreement to the contrary, the BOARD shall not be obligated to make the BOARD Facilities available for use by a TOWN Recognized Provider for any events where admission or concession fees or charges will be collected or imposed by the TOWN Recognized Provider.
5. The sale, use or possession of alcoholic beverages or controlled substances at any of the Facilities sites is strictly prohibited.
 6. In the event an issue arises which cannot be resolved between the Principal and the TOWN'S Parks and Recreation Director regarding the use or availability of a BOARD Facility or a TOWN Facility, the dispute shall be referred to the BOARD's Chief Operating Officer and the TOWN Manager who shall both make a good faith effort to resolve the dispute.
 7. The BOARD shall not be required to make any improvements or repairs to the BOARD Facilities as a condition of use of the Facilities by the TOWN or TOWN Recognized Providers. The TOWN shall not be required to make any improvements or repairs to the TOWN Facilities as a condition of use of the Facilities by the BOARD. The parties and TOWN Recognized Providers shall accept the BOARD Facilities in their "As is", "Where is" condition. The BOARD shall accept the TOWN Facilities in their "As is", "Where is" condition. The parties acknowledge and agree that the BOARD has not made any warranties or representations to the TOWN regarding the BOARD Facilities, including, but not limited to, any representations or warranties regarding the suitability of the BOARD Facilities for use by the TOWN or TOWN Recognized Providers. The parties acknowledge and agree that the TOWN has not made any warranties or

representations to the BOARD regarding the TOWN Facilities, including, but not limited to, any representations or warranties regarding the suitability of the TOWN Facilities for use by the BOARD.

8. Notwithstanding any provision of this Agreement to the contrary, the use of the BOARD Facilities by the TOWN or the TOWN Recognized Providers shall only amount to a license to use the BOARD Facilities on a non-exclusive basis, which license shall be revocable by the BOARD for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting the TOWN or the TOWN Recognized Providers any title, interest or estate in the BOARD Facilities. Notwithstanding any provision of this Agreement to the contrary, the use of the TOWN Facilities by the BOARD shall only amount to a license to use the TOWN Facilities on a non-exclusive basis, which license shall be revocable by the TOWN for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting the BOARD any title, interest or estate in the TOWN Facilities.
9. 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 fifteen (15) days written notice to cure the default. In the event the defaulting party fails to cure the default within the fifteen (15) day cure period, the non-defaulting 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.
10. All notices herein required shall be in writing. Any such notice shall be deemed sufficiently delivered or served if hand delivered or deposited in the U.S. Mail:

As to TOWN: TOWN Manager
TOWN of Jupiter
210 Military Trail
Jupiter, FL 33458

With copy to: Parks and Recreation Director
TOWN of Jupiter

200 Military Trail
Jupiter, FL 33458

With a copy to: Baird & Roselli, TOWN Attorneys
11891 U. S. Highway One, Suite 100
North Palm Beach, FL 33408

As to BOARD: Principal, Jupiter Elementary School
School District of Palm Beach County
200 S. Loxahatchee Drive
Jupiter, FL 33458

With copy to: Director, Planning Department
The School District of Palm Beach County
3300 Forest Hill Boulevard
West Palm Beach, FL 33406 -5813

And:

Office of Chief Counsel
The School District of Palm Beach County
3300 Forest Hill Boulevard
West Palm Beach, FL 33406-5813

11. This Agreement may not be assigned by either party, in whole or in part, without the prior written consent of the other party.
12. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party: (i) without cause upon fifteen (15) days prior written notice to the other party or (ii) with cause upon the expiration of the fifteen (15) day cure period provided for in Section 9 above.
13. 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. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.
15. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.
16. 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.
17. 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.
18. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement.
19. Except as otherwise provided for in this Agreement, this Agreement may be modified and amended only by written instrument executed by the parties hereto.
20. 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.
21. 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.
22. This Agreement shall become effective when signed by both parties hereto (hereinafter "Commencement Date"). The term of this Agreement shall be for a period of two (2) years and shall be automatically renewed up to two (2) additional

consecutive one (1) year terms, unless it is terminated by either party in accordance with the termination provisions of this Agreement.

23. 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 Statutes.

24. If the TOWN is successful in obtaining a Palm Beach County Community Development Block Grant (CDBG) by September 1, 2007, the TOWN shall make recreational improvements to the School's campus in an amount no less than \$78,485. These improvements shall be completed by no later than December 31, 2008 unless the completion date is extended by mutual agreement of the parties.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties herein on the day and year first above written.

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

By: _____
Mr. William Graham, Chair

ATTEST:

Dr. Arthur C. Johnson, Superintendent

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
School BOARD Attorney

Date: _____

TOWN OF JUPITER, FLORIDA

By: _____
Karen J. Golonka
Its: Mayor

ATTEST:

Sally Boylan, TOWN Clerk

Approved as to form and legal sufficiency

By: _____
Thomas J. Baird, TOWN Attorney

Date: _____

EXHIBIT "A"
TOWN RECOGNIZED PROVIDER GROUPS

Jupiter-Tequesta Athletic Association (JTAA)

Corn Maya, Inc.

**FACILITY REQUEST FORMS
THE TOWN OF JUPITER AND
THE SCHOOL BOARD OF PALM BEACH COUNTY**

EXHIBIT "B"

INTER-LOCAL FACILITY REQUEST FORM

Date _____ Contact Person _____ School Name (if applicable) _____

Phone Number _____ Fax Number _____ Other Contact Number _____

Address _____ Town _____ State/ZIP _____

FACILITY REQUEST:

Choice #1

Choice #2

Activity _____

Age Group _____

Estimated Attendance:

Participants: _____ Spectators: _____ Total: _____

Mark appropriate day(s) facility will be needed:

Monday Tuesday Wednesday Thursday Friday Saturday Sunday

Date(s): _____

Time(s): From: _____ **am/pm** **to** _____ **am/pm**

New Request

Repeat Request:

Date and location of previous use: _____

Other pertinent information (as necessary): _____

Requesting Principal

Date

Director of Recreation Services

.....
 Approve Disapprove

Reason if

disapproved: _____

 Principal

Date

Director of Recreation Services

