**INTERLOCAL AGREEMENT**

**BETWEEN**

**THE CITY OF PALM COAST AND**

**FLAGLER COUNTY SCHOOL DISTRICT**

**This INTERLOCAL AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF PALM COAST**, a Florida municipal corporation (“Palm Coast”), whose address is 160 Lake Avenue, Palm Coast, Florida 32164, and **FLAGLER COUNTY SCHOOL DISTRICT** (“SCHOOL BOARD”), whose address is 1759 East Moody Blvd., Bldg. 2, Bunnell, Florida 32110. **PALM COAST** and **SCHOOL BOARD** shall be referred to as the “Parties.”

**WITNESSETH**:

**WHEREAS**, this Agreement is authorized pursuant to the provisions of Chapters 125, and 166, *Florida Statutes*, and other applicable laws; and

**WHEREAS,** this Agreement supplements that Interlocal Agreement for Joint Use of Real Property and Facilities and Coordination of Programs and Services entered into by the Parties on September 16, 2008, as recorded in OR 1680 Page 1816 of the Public Records of Flagler County; and

**WHEREAS,** Palm Coast has determined a need for an additional restroom facility and sports lighting to be located on SCHOOL BOARD’s property near the Indian Trails Sports Complex; and

**WHEREAS,** SCHOOL BOARD desires to have an additional restroom facility constructed and sports lighting installed on its’ property by Palm Coast for use by Palm Coast and SCHOOL BOARD; and

**WHEREAS,** SCHOOL BOARD shall be the owner of the additional restroom facility and the sports lighting.

**NOW, THEREFORE,** in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. RECITALS.**  The above recitals are true and correct, and form a material part of this Agreement upon which the Parties have relied.

**SECTION 2. EFFECTIVE DATE.** This Interlocal Agreement shall become effective upon the date of execution by both Parties.

**SECTION 3. RESPONSIBILITIES OF PALM COAST.**

1. Palm Coast will construct a restroom facility on SCHOOL BOARD property located at Indian Trails Middle School for use by Palm Coast and SCHOOL BOARD, as shown on Exhibit “A.” Palm Coast shall be responsible for all construction costs associated with this project.
2. Palm Coast may install sports lighting on the SCHOOL BOARD fields with a separate electric meter. Palm Coast will be responsible for all construction and maintenance costs associate with the field lights. Palm coast will also be responsible for all monthly electric costs for the use of the lights for non-school activities.
3. Palm Coast shall provide janitorial services during tournaments/events and all other activities held by Palm Coast including replenishment of toiletries and locking the restroom facility after each tournament/event and all other activities.
4. Palm Coast shall reimburse SCHOOL BOARD one-half the cost of the fencing to separate the sport fields from the remaining school facilities.

**SECTION 4. RESPONSIBILITIES OF SCHOOL BOARD.**

1. SCHOOL BOARD is to own the restroom facility and the sports lighting constructed by Palm Coast on SCHOOL BOARD property located at Indian Trails Middle School.
2. SCHOOL BOARD shall be responsible for securing the restroom facility when not in use either by Palm Coast or SCHOOL BOARD.
3. SCHOOL BOARD shall be responsible for the cost of all utilities associated with this restroom facility.
4. SCHOOL BOARD shall provide janitorial services, including the replenishment of toiletries, during school activities, after school activities and school related events.
5. SCHOOL BOARD may add fencing to SCHOOL BOARD property to separate the sport fields from the remaining school property. SCHOOL BOARD shall be responsible, for the maintenance and locking of any gates associated with the fence.
6. At the time of this Agreement, SCHOOL BOARD does not anticipate using the field lights installed and maintained by Palm Coast. If in the future, SCHOOL BOARD desires to use the field lights for school activities, SCHOOL BOARD will reimburse Palm Coast for the cost of the electric use as per a separate agreement approved by both parties at that time.

**SECTION 5. INSURANCE.**  During the term of this Interlocal Agreement, SCHOOL BOARD shall provide to PALM COAST and PALM COAST shall provide to SCHOOL BOARD, a current certificate of policy evidencing its comprehensive and general liability insurance coverage in a sum not less than $1,000,000 Aggregate and $1,000,000 per occurrence. SCHOOL BOARD shall also provide PALM COAST and PALM COAST shall also provide SCHOOL BOARD with a written endorsement naming the other Party as an additional insured, and such endorsement shall also state “Such insurance as afforded by this policy shall be primary, and any insurance carried by SCHOOL BOARD or PALM COAST shall be excess and noncontributory.” Any and all insurance coverage may be provided by PALM COAST Self-Insurance program. Coverage shall provide notice to the additional insureds of any change in or limitation of coverage or cancellation of the policy no less than thirty (30) days prior to the effective date of the change, limitation or cancellation. This insurance shall cover the restroom facility, fencing, and the lighting as provided herein.

**SECTION 6. INDEMNIFICATION.**  Insofar as permitted by law, SCHOOL BOARD shall assume the defense and hold harmless PALM COAST and/or any of its officers, agents or employees from any liability, damages, costs or expenses of any kind whatsoever, including attorneys’ fees, which may arise by reason of the sole fault or negligence of SCHOOL BOARD, its officers, agents or employees.

1. Insofar as permitted by law, PALM COAST shall assume the defense and hold harmless SCHOOL BOARD and/or any of its officers, agents or employees from any liability, damages, costs, or expenses of any kind whatsoever, including attorneys’ fees, which may arise by reason of any harm to person(s) or property received or suffered by reason of the sole fault or negligence of PALM COAST, its officers, agents or employees.
2. It is the intent of the SCHOOL BOARD and PALM COAST that where negligence or responsibility for any harm to person(s) or property is determined to have been shared, the principles of comparative negligence shall be followed and each Party shall bear the proportionate cost of any liability, damages, costs or expenses attributable to that Party.
3. SCHOOL BOARD and PALM COAST agree to notify the other Party of any claims, administrative actions, or civil actions determined to be within the scope of this Agreement within ten (10) calendar days of such determination. PALM COAST, and/or SCHOOL BOARD further agree to cooperate in the defense of any such actions. Nothing in this Interlocal Agreement shall establish a standard of care or create any legal right for any person not a Party to this Agreement.

**SECTION 7. NO PARTNERSHIP.**  Nothing contained in this Agreement shall be deemed or construed so as to create the relationship of employer-employee, principal-agent, joint venturers, co-adventurers, or partnership between the PALM COAST and/or SCHOOL BOARD, and they are and shall remain independent one as to the other.

**SECTION 8. PUBLIC RECORDS.**  The Parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and those made or received by the Parties in conjunction with this Agreement.

**SECTION 9. INTERPRETATION.** This Agreement shall not be construed more strictly against any one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, both having contributed substantially and materially to the preparation thereof.

**SECTION 10. TERMINATION.** Each party shall have the right to terminate this Agreement in the event the other party is in default of any material term or condition of this Agreement, by providing thirty (30) days’ advance written notice specifying the basis for such determination.  If the other party thereafter fails to commence reasonable steps within the thirty-day period to correct the default or fails to fully remedy the default within ninety(90) days from the date of the notice, then the Agreement shall be deemed terminated; provided that, if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Agreement shall not terminate so long as the party in default is proceeding promptly to remedy the default and does so with such additional period as may be agree to by the parties.

This Agreement may be terminated at any time by either the CITY or the SCHOOL BOARD prior to its expiration for good cause upon ninety (90) days written notice.  Good cause shall include, but is not limited to the following items: (1) financial hardship as demonstrated by a City Council or School Board resolution; and/or (2) the School Board’s need to recapture school grounds for school purposes as demonstrated by the School Board’s resolution.

**SECTION 11. NOTICES.** Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally delivered or sent by first class mail, postage prepaid, addressed to the respective Parties as follows:

**TO PALM COAST:** **TO SCHOOL BOARD:**

City of Palm Coast Flagler County School District

Attn: City Manager Attn: Superintendent

160 Lake Avenue 1759 East Moody Blvd., Bldg. 2

Palm Coast, FL 32164 Bunnell, FL 32110

**SECTION 12. REPRESENTATION OF AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the respective Parties to execute this Agreement.

**SECTION 13. MODIFICATION OF AGREEMENT.** This Agreement may only be modified by written agreement of the Parties, adopted with the same formalities as the adoption of this Agreement.

**SECTION 14. INTERPRETATION.** The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against the other Party. The headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

**SECTION 15. SEVERABILITY.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal, or unenforceable.

**SECTION 16. RECORDATION AND EFECTIVE DATE.** After execution, this Agreement shall be forwarded to the Palm Coast City Clerk for recordation with the Clerk of Court in and for Flagler County, Florida.

**IN WITNESS WHEROF,** the duly authorized officials of the Parties have made and executed this Agreement on the respective dates indicated below.

*ATTEST:* **CITY OF PALM COAST**

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Virginia A. Smith, City Clerk Jon Netts, Mayor

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William J. Reischmann, City Attorney

*ATTEST:*  **FLAGLER COUNTY SCHOOL DISTRICT**

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Jacob Oliva, Superintendent Colleen Conklin, Chairperson of Board

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPROVED AS TO FORM:

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Kristy J. Gavin, School Board Attorney

EXHIBIT A

LOCATION OF RESTROOM FACILITIES