



**INTERLOCAL AGREEMENT
PURSUANT TO
CHAPTER 163, FLORIDA STATUTES**



**JOINT USE OF POINCIANA ELEMENTARY SCHOOL, HORACE O'BRYANT
SCHOOL AND GERALD ADAMS ELEMENTARY SCHOOL SPORTS AND
RECREATIONAL FACILITIES**

AGREEMENT made the last day below written, by and between the **DISTRICT SCHOOL BOARD OF MONROE COUNTY, FLORIDA**, as the contracting agent for the Monroe School District, pursuant to Section 230.22(4), Florida Statutes, whose address is 241 Trumbo Road, Key West, Florida 33040 ("SCHOOL BOARD"), and the **CITY OF KEY WEST**, a Florida municipal corporation, whose address is 1300 White Street, Key West, Florida, 33040 (the "CITY").

WITNESSETH, that the School Board and City hereby agree as follows:

1. Recitations.

A. Chapter 163, Florida Statutes, known as the "Florida Interlocal Cooperation Act Of 1969" ("the Act"), specifically provides that its' purpose is to "permit local governmental units 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 in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities". (§163.01(2), F.S.).

B. The Act further provides that "a public agency of this state may exercise jointly with any other public agency of the state ... any power, privilege, or authority which such agencies share in common and which each might exercise separately." (§161.01(4).)

C. The Act's definition of "public agency" includes a municipality/city and a school district. (§163.01(3)(b)).

D. The School Board and City, pursuant to this Act, desire to enter into this Interlocal Agreement ("the Agreement") for the purposes, and upon the terms and conditions, described below, believing that this Agreement will allow each agency to make more efficient use of facilities, personnel, and services necessary to, common to, or

available to each agency, and having a goal of a more economical and efficient use and savings of public funds, while at the same time providing recreational facilities to the citizens of, and visitors to, Monroe County and the City.

2. Entire Agreement. It is hereby understood and agreed that this contract states the entire agreement and that the parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not written in this Agreement.

3. Purpose of Agreement. The purpose of this Agreement is to define the respective duties and obligations of the School Board and the City under this Agreement relative to the provision of enhanced recreational facilities and opportunities to the citizens of, and visitors to, Monroe County and the City.

4. Method for Accomplishing Purpose. The basic method for accomplishing the purpose of this Agreement is (1) for the School Board to provide available recreational space areas at **POINCIANA ELEMENTARY SCHOOL, HORACE O'BRYANT SCHOOL, KEY WEST HIGH SCHOOL, AND GERALD ADAMS ELEMENTARY SCHOOL** ("the Schools"), such areas to be used by citizens of, and visitors to, Monroe County and the City outside of the normal and special school operating hours and (2) for the City to provide control, supervision, and scheduling of activities on the recreational space areas outside of the normal and special school operating hours as may be mutually agreed upon by the School Board and the City; and for the City to pay the costs of utilities and maintenance associated with the recreational space areas. The recreational space areas (the "Facilities") covered by this Agreement are described in more detail in Exhibit A.

5. Duration of Agreement. The term (the "Term") of this Agreement shall commence upon the filing and recording of this Agreement in the Public Records of Monroe County, Florida, and shall remain in effect for a period of five (5) years from the effective date of this Agreement with annual renewals as described below, except as may be sooner terminated in accordance with the terms of this Agreement. Either the City or the School Board shall have the right, in its sole discretion, to terminate this Agreement upon written Notice (as hereinafter defined) to the other party delivered at least sixty (60) days prior to the end of any annual Term. If no such Notice is given by either party, this Agreement shall automatically renew for one (1) year terms until such time as either party desires to terminate this Agreement as set forth in the preceding sentence. If such Notice is given, this Agreement shall terminate upon the expiration of the then current annual Term, and following the last day of the current annual Term, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination. The definition of "Term" shall include all renewal terms hereof.

6. Rescission or Termination of Agreement. This Agreement may be terminated by either the School Board or the City by written notice to the other party at least sixty (60) days in advance of the termination date.

7. Maintenance of Facilities. City shall at all times during the term of this Agreement and at its own cost and expense repair, replace and maintain the Facilities in a good, safe and substantial condition, safe from any defects which could be reasonably foreseen to cause injury to person. Each party shall use all reasonable precautions to prevent waste, damage or injury to the Facilities. The City shall be responsible for expenses related to utilities including electric and water. City shall be responsible for ensuring that the Facilities are maintained in a clean and orderly manner following each use of the Facilities by City. City shall be responsible for ensuring the Facilities are locked and secured following each use

9. Improvements by City and School Board. Any improvements to any School Board property covered by this Agreement, initiated by City, shall be approved by the School Board and in accordance with School Policy, in writing. Any improvements to any property covered by this Agreement, initiated by School Board, shall be approved by City in writing to the extent that City would bear any portion of financial responsibility for, or cost of, said improvements. Any improvements made become the sole property of the School Board unless otherwise agreed in writing. The School Board retains the right to improve the subject property as it sees fit at its sole discretion and expense.

10. Access to the Facilities.

- A. The School Board and City agree that access by the general public to school recreational area sites is dependent upon (1) the requirements for use by the school during normal and special school hours, (2) the type of recreational facilities at the School, and (3) the desires of the general public as reflected in organized team sports concerns and individual, sporadic use on a non-scheduled basis. To that end, the School Board and City agree that, in consultation with the principal of the school, the parties will develop a mutually acceptable schedule of use which is to be included in detail and incorporated into this Agreement by reference. Each School shall have first priority when school-related events are scheduled.
- B. To the extent times and dates of City access to recreational areas covered under this Agreement are not already specified by the mutually acceptable schedule of use mandated by Paragraph 10(A), City shall have the right to use said recreational areas after 5:30PM on days that school is in session. On days when school is not in session and the recreational areas are not otherwise being utilized by School

Board, City shall have access to recreational areas after 8:00AM.

- C. City shall permit no pets access to the Facilities and shall be responsible for ensuring same during periods in which the City is utilizing the Facilities.
- D. School Board and City shall coordinate regarding the issuance of keys to the Facilities. To the extent necessary for City to have general access to the Facilities, School Board shall issue keys for locks maintained by School Board to City upon request. In no event shall City provide keys to the Facilities to any person without prior written authorization of School Board. City shall provide to School Board a copy of keys for all locks maintained at the Facilities by City. City shall maintain a list of all parties in possession of such keys, provide a regularly updated copy of said list to School Board.

11. Utility Services. The City will assume responsibility for both the water and electric meters that service the recreational areas and the associated bills for irrigation and field lighting. The City agrees to place at each site at least one trash/garbage receptacle and to be responsible for the costs associated therewith, including the costs of disposal.

12. Title to Tangible Property Upon Termination of Agreement. The School Board and City agree that, upon the termination of this Agreement, the title to all tangible property located upon the recreational area sites shall be in the name of the School Board.

13. Acceptance of Gifts, Grants, Assistance Funds, or Bequests. Both the School Board and the City agree that either shall be, and is, empowered to accept for the benefit of either or both of them, gifts, grants, assistance funds, or bequests to be used for recreational purposes at the school sites affected by this Agreement.

14. Claims for Federal or State Aid. Both the School Board and the City agree that either shall be, and is, empowered, to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by the other party prior to submission.

15. Adjudication of Disputes or Disagreements. The School Board and City agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of the School Board and the City in accordance with the provisions of the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

16. Failure of Agency to Pay Share of Costs and Expenses; Rights of Other Agency. In the event that either the School Board or the City shall fail to pay its

respective share of costs and expenses associated with this Agreement as provided for in the various attachments to this Agreement, the other party shall have the right to declare this Agreement null and void and immediately terminate the Agreement by filing a Declaration Of Termination in the Public Records of Monroe City, and may seek payment by all avenues legally available to them.

18. Liability Coverage; Insurance; Hold-Harmless; Indemnity.

A. Both the School Board and the City agree that each will obtain general liability, property damage, and medical payment insurance coverage through either self-insurance, commercial insurance, or a combination of both, in such limits as the City and the School Board shall determine appropriate by a separate written addendum to this Agreement. Additionally, the City and the School Board each represents to the other that it carries suitable public liability and property damage insurance, or is self-insured, in amounts adequate to cover any anticipated claim arising out of its respective use of the recreational space and will continue to carry such insurance or remain self-insured during the entire term of this Agreement.

B. All insurance and self-insurance obtained by the City and in force under this Agreement shall be primary; that is, for all claims for property damage, injury, or death arising out of the use of the recreational space during the time that the City has responsibility for the supervision and control of the recreational space, the City's insurance will respond first for the settlement or payment of the claim or any judgment, and only after the City's insurance coverage limits have been exhausted will the School Board's insurance coverage be called upon to respond. This provision shall not apply to claims attributable solely to negligence by School Board or its employees. The School Board retains the right to select mutually agreeable counsel for its defense.

C. Each party will be responsible for any acts of negligence on the part of its agents or employees. Each party will hold the other party harmless from all claims arising out of its respective use, and each party shall have a duty to defend all claims arising out of its respective use, of the recreational areas.

E. To the extent permitted by Florida law, the City shall indemnify and hold harmless the School Board from and against all expenses, liabilities, damages, costs, and claims of every kind, including reasonable counsel fees and costs at both the trial and appellate levels, by or on behalf of any person or entity arising out of either (1) a failure by City to perform any of the terms or conditions of this agreement, (2) any injury or damage happening on or about the facilities during periods when City is utilizing the recreational areas or responsible for control or supervision or

condition of the recreational areas, (3) failure to comply with any law of any governmental authority, or (4) any mechanic's lien or security interest filed against the school premises or facilities; and the School Board shall indemnify and hold harmless the City from and against all expenses, liabilities, damages, costs and claims of every kind, including reasonable counsel fees and costs at both the trial and appellate levels, by or on behalf of any person or entity arising out of either (1) a failure by the School Board to perform any of the terms or conditions of this agreement, (2) any injury or damage happening on or about the facilities during periods when the School Board is utilizing the facilities, (3) failure to comply with any law of any governmental authority, or (4) any mechanic's lien or security interest filed against the City's premises or facilities.

- F. School Board and City shall require all third-party organizations, including but not limited to sports teams and clubs, to obtain general liability, property damage, and medical payment insurance coverage, in an amount no less than <AMOUNT>. Said third-party organizations shall be required to furnish proof of coverage, and shall name both City and School Board as additional insured parties under the policy.

19. Nondiscrimination. The School Board and City agree to comply with all Federal and Florida statutes, as applicable, relating to nondiscrimination. These include but are not limited to:

- A. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin.

- B. Title IX of the Education Amendment of 1972, as amended (20 U.S.C. ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex.

- C. Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicaps.

- D. The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age.

- E. The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.

- F. The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.

- G. The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse

patient records.

H. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing.

I. The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability.

J. The Individuals with Disabilities Education Act (20 U.S.C. ss. 1400-1485), as may be amended from time to time, relating educating children with disabilities.

K. The Florida Education Equity Act, s. 228.2001, F.S., relating to nondiscrimination.

L. Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

20. Cooperation. The School Board and City agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the provision of the services and materials under this Agreement in the event any administrative or legal proceeding is instituted against the either party relating to the formation, execution, performance, or breach of this Agreement. The School Board and City specifically agree that neither party shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

21. Books, Records, and Documents. The School Board and City shall maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for audit purposes during the term of the Agreement and for three years following the termination of this Agreement.

22. Covenant of No Interest. The School Board and City covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that each Party's only interest is to perform and receive benefits as recited in this Agreement.

23. Code of Ethics. The School Board and City agree that each agency's respective officers and employees recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

24. No Solicitation/Payment. The School Board and City warrant that neither has employed or retained any company or person, other than a bona fide employee working solely for School Board or City, to solicit or secure this Agreement and that neither the School Board nor City have paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the School Board or City, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the School Board and City agree that the non-breaching agency shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

25. Public Access. The School Board and City shall allow and permit reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the School Board or City in conjunction with this Agreement; and the non-violating agency shall have the right to unilaterally cancel this Agreement upon violation of this provision by the violating agency.

26. Management/Notices. The School Board's Project Manager Under this Agreement is:

Patrick Lefere

with an (e-mail) address of:

Patrick.Lefere@Keysschools.com

and a mailing address of:

241 Trumbo Road, Key West, Florida 33040

and a telephone number of:

(305) 293-1400 Ext. 53392

The City's Project Manager is:

Marcus Davila

with an (e-mail) address of:

mdavila@cityofkeywest-fl.gov

and a mailing address of: PO Box 01409, Key West, FL, 33041-1409

and a telephone number of: 305-809-3751

Any notice or other written communication, except invoices, between the agencies shall be considered delivered when posted by Certified Mail, Return Receipt Requested; delivered in person to the Project Manager; or upon confirmed electronic receipt by telecopier/telefacsimile or electronic mail (e-mail). Respective Mailings shall be addressed to the Project Manager at the address listed in the preamble above.

27. Severability. In the event one or more provisions of this Agreement are declared invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.

28. Non-Waiver of Immunity. Notwithstanding the provisions of §768.28, Florida Statutes, the participation of the School Board and City in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the School Board and City be required to contain any provision for waiver.

29. Privileges and Immunities. All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the School Board and City, when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extraterritorially under this Agreement.

30. Legal Obligations and Responsibilities; Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating agency from any obligation or responsibility imposed upon the agency by law except to the extent of actual and timely performance thereof by any other participating agency, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the participating agencies, except to the extent permitted by the Florida constitution, state statutes, case law, and, specifically, the provisions of Chapter 163, Florida Statutes.

31. Effective Date. This Agreement, and any subsequent amendments, shall become effective upon filing with the Clerk of Circuit Court of Monroe City, Florida.

32. Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the School Board and City agree that neither the School Board nor the City or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

33. Recreational Area Spaces. The premises subject to this Agreement are delineated in **Attachment A**. Attachment A consists of a site survey of the Schools. The recreational spaces subject to this agreement are outlined in orange or depicted by a heavy black line.

IN WITNESS WHEREOF, the School Board, pursuant to a motion duly made, seconded and passed in regular and open session and by and through its Chairman and Superintendent; and the Board Of Commissioners of the City of Key West, pursuant to a motion duly made, seconded, and passed in regular and open session and by and through its Mayor and Clerk, have affixed their respective and representative hands and seals on the dates indicated.

SCHOOL BOARD OF MONROE COUNTY, FLORIDA

(Seal)

By: _____
Chairman
Date: _____

Approved As To Form:

School Board Attorney

ATTEST:

By: _____
Mark Porter, Superintendent
Date: _____

ATTEST:

CITY OF KEY WEST, FLORIDA,

a municipal corporation of the State of Florida

By: _____
City Clerk

By: _____
Mayor

Date: _____

Date: _____

Approved as to Form.

By: _____
City Attorney

Recorded At Page _____, Minute Book No. _____, Monroe County School Board
Records, on the _____ day of _____, 2003.

School Board Secretary