

**INTERLOCAL AGREEMENT BETWEEN
THE VILLAGE OF WELLINGTON
AND
THE SCHOOL BOARD OF PALM BEACH COUNTY
FOR FUNDING, PLANNING, DESIGN, CONSTRUCTION AND MAINTENANCE
OF CAPITAL IMPROVEMENTS FOR A SPORT COMPLEX AT THE
WELLINGTON COMMUNITY HIGH SCHOOL AND FOR
MODIFICATION OF APRIL 20, 2016 INTERLOCAL AGREEMENT**

This INTERLOCAL AGREEMENT ("Agreement") is made this ____ day of _____, 2019, between the Village of Wellington, 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" and collectively with Village the "Parties"), 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 Parties entered into that certain Interlocal Agreement Between the Village of Wellington and The School Board of Palm Beach County for the Mutual Use of Recreational Facilities dated April 20, 2016 (the "2016 ILA"); and

WHEREAS, both the Village and the Board agree that there exists a public need in the Wellington Community High School ("WCHS") area for athletic fields and a swimming pool for the use and enjoyment of the residents of the Village, the WCHS students and the BOARD's public education programs; and

WHEREAS, there is available at WCHS sufficient land area for the installation of four (4) new and one (1) resurfaced artificial turf athletic fields, ~~and an Olympic-size~~ swimming pool and other improvements as set forth herein; and

WHEREAS, the Village is willing to fund, plan, design, construct and maintain five (5) artificial turf fields, the other improvements set forth herein and, if approved by the Village Council, ~~an Olympic-size~~ swimming pool, on WCHS campus owned by the Board; and

WHEREAS, Board and Village agree to share the use of the Sport Complex Facilities as defined herein and as provided under the terms of this Agreement, and to modify the 2016 ILA with respect to use of the Sport Complex Facilities.

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 Village to fund, plan, design, construct and maintain five (5) artificial turf fields, one of which will be the existing stadium field, three (3) basketball courts with auxiliary buildings, eight (8) tennis courts ~~and, a _____field event area/equipment~~ jump field, a kick wall, and if approved by the Village Council, ~~an Olympic-size swimming pool, including capital and renewal/replacement funding, on the WCHS campus, which will allow for expanded use by the Board, WCHS, Village and County,~~ as well as maintain the newly constructed tennis courts, basketball courts, Jump field and Kick Wall. [LC1]

3. Definitions.

A. "Village Manager" means the Manager of the Village of Wellington or his or her designee.

B. "Sport Complex Facilities" or "Facilities" means the four (4) new artificial turf fields, the resurfaced artificial turf stadium field, three (3) basketball courts, a _____field event area/equipment, kick wall, restrooms, maintenance and storage building, concession stand and, if approved by the Village Council, ~~an Olympic-size swimming pool~~ and support buildings, constructed and maintained by the Village on the WCHS campus, as well as the newly constructed tennis and basketball courts maintained by the Village, as depicted on Exhibit "____", attached hereto and made a part hereof.

C. "County" means Palm Beach County, a political subdivision of the State of Florida.

D. "School Hours" means 7:00 a.m. until 6:00 p.m. on all days students are required to attend classes during the official non-summer school year, as set forth in the official "School Board Approved" calendar for each school year, as posted from time to time on the Board's official website. ~~In the event that the WCHS end of school day dismissal time changes to a time later than the current time of 2:50 p.m., the parties shall meet and mutually agree in writing on an adjustment to the end time of the defined term School Hours, with the general intent being that School Hours will end a minimum of one hundred ninety (190) minutes after the WCHS end of school day dismissal time.~~ [BL1]

E. "Stadium Field" means the athletic field inside the track at WCHS, which is used for football, soccer, lacrosse, flag football, band, cheerleading and other WCHS activities, as depicted on Exhibit "____", attached hereto and made a part hereof.

F. "Priority of Use" means the right of each Party to use the Facilities at the times and on the days agreed upon herein as well as to the resolution of the priority of uses when there are conflicting requests for the use of a Facility.

G. "Village Programs" means all parks and recreational programming offered by Wellington, including facility rentals and all programs run by both Wellington and its recognized recreation providers.

H. "Modernization/Replacement" means the period of time at which the Board schedules WCHS to be reconstructed or remodeled to current standards and will be no sooner than fifty years after the date upon which WCHS was first opened.

4. The Sport Complex Facilities Improvement Project.

A. The "Project" consists of the addition of synthetic turf on five (5) athletic fields, including the ~~S~~stadium ~~F~~field, construction of three (3) basketball courts, restroom facilities, maintenance and storage buildings, concession stand, ~~with auxiliary buildings~~, construction of eight (8) tennis courts, a _____field event area/equipment and kick wall, relocation ~~of~~ on the area for ~~P~~pole, ~~V~~vault, ~~L~~ong and ~~H~~high ~~J~~ump, and if approved by the Village Council, will include a ~~competition ready Olympic Size S~~swimming ~~P~~pool with a ~~D~~diving ~~W~~well and ~~D~~diving ~~B~~boards and/or ~~P~~platform(s) and necessary support buildings, as depicted on Exhibit "____", which will allow for expanded use by WCHS and Village, including capital and renewal/replacement funding, in accordance with this Agreement.

B. The components of the Project include: design and engineering; removal of existing grass and irrigation system; re-grading soils to new base elevation; electrical work including ~~scoreboard connections and~~ high masts with lighting fixtures; potable water for sidelines; new base rock and above and/or underground drainage system; rock and sand to specifications; base pad below synthetic turf for additional safety and longer wear or other approach with similar performance; synthetic turf including lines for sports (football, soccer, boys lacrosse, girls lacrosse), WCHS and Village logos; infill material; sweeper equipment for maintenance, shelter as needed for sweeper equipment, security fencing and landscaping as may

be ~~required~~~~needed or desired~~. The Sport Complex Facilities shall have electric and water meters that are separate from the electric and water meters for WCHS. Village shall establish utility accounts for the Sport Complex Facilities and shall be responsible for payment of all charges associated therewith during the term of this Agreement.

C. Village estimates a Project budget of \$~~_____~~ \$12,000,000 as set forth in the attached Exhibit “_____”.

D. All improvements made by the Village to WCHS property pursuant to this Agreement (the “Project”) will meet State Requirements for Educational Facilities (“SREF”).^[LC2]

E. Village will be the Authority Having Jurisdiction (AHJ) for building permits for the Project.

F. Village will relocate the parent drop-off loop to the rear of the campus, in accordance with the plans attached hereto as Exhibit “_____”.

G. If the construction of the Swimming Pool is approved by the Village Council, Village will install its own metering systems for water, power and sewage for the Swimming Pool and related auxiliary buildings; and will pay for all incurred costs associated with the use of the Swimming Pool. If the Swimming Pool is not approved by the Village Council by July 1, 202~~01~~, (the “Swimming Pool Approval Deadline”) and constructed by July 1, 202~~25~~, the Swimming Pool shall be automatically deleted from the defined term Project. If the Parties mutually agree to the installation of a swimming pool after the expiration of the Swimming Pool Approval Deadline, it shall be memorialized by an amendment to this Agreement or approval of a separate agreement between the Parties.

H. Village may only use the two (2) parking lots on the East side of campus in conjunction with Village’s use of the Sport Complex Facilities (Exhibit “_____”) during ~~s~~School ~~H~~Hours.

I. Subject to the terms of this Agreement, including meeting of all of the Project conditions, as set forth below, the Village agrees to fund 100% of the final costs for the Project.

J. The following conditions shall be satisfied for the Project to proceed (“Project Conditions”):

1. Issuance of SFWMD ERP modification; and
2. Board reviews and approval of final plans of the Project.
3. Authority to approve the security and fencing related plans, equipment and provisions is delegated to the Board’s Chief Operating Officer (“Board’s COO”) and no further approval by Board is required.

4. School District Risk/Benefits Management will take part in the decision making process during the design phase with regard to the height of the diving platforms/boards (not to exceed 3 meter).

K. The proposed schedule for the Project is attached as Exhibit “_____.” The construction commencement date is targeted for approximately XX, 2019.

L. All of the Village’s prime contractors, ~~subcontractors and other parties performing services on the design, construction, maintenance, repair and replacement of the Project~~ shall in the contracts with the Village be required to name the School Board of Palm Beach County, Florida as an additional insured on all policies of insurance except Workers Compensation and their insurance carriers shall waive all subrogation rights against the Board for all losses or damages that occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not. The School Board requires General Liability policies to be endorsed with CG 24 04 Waiver of Transfer of Rights of Recovery Against Others to Us or similar endorsement. The types and minimum limits of coverage required shall be established, from time to time by the Board’s Risk Management Department but as a minimum will require all contractors, subcontractors and other parties to provide Workers Compensation, Employers Liability and Automobile Liability coverages with companies rated A-VII or better by AM Best.

5. Priority of Use

A. For three (3) of the four (4) artificial turf fields located in the northwest corner of the WCHS campus, basketball courts and tennis courts, the Priority of Use shall be as follows:

1. During School Days, Board will have priority use until 6:00 p.m. and Village will have priority use after 6:00 p.m.

2. Village programs, including tournaments, will have priority use on weekends and during non-School Hours.

3. Board or Village may request use outside of the agreed upon usage hours by submitting a request form 30 days in advance of the requested use.

B. For the fourth artificial turf field, the Priority of Use shall be as follows:

1. Board will have priority of use during the summer between the hours of 6:00 a.m. and 12:00 p.m. ~~(period to be specified)~~

2. Village programs, including tournaments, will have priority use on weekends and during non-School Hours on school days.

C. For the Stadium Field, the priority of use shall be as follows:

1. Board will have priority of use Monday through Friday and Village will have priority of use on weekends, provided however, Board will have priority on Saturday for play-offs and make-up sporting events.

2. Village may request use of the stadium field outside of the agreed upon usage hours by submitting a request form ~~30 days~~ in advance of the requested use.

D. For the Swimming Pool, the priority of use shall be as follows:

Village will have first priority of use, including daily admission and all programming such as swim lessons, water aerobics and day/summer camp activity, and Board will have second priority of use during all hours of operation, without regard to School Hours or whether school is in session. Provided, however, that Board will be allocated at least 3 hours of non-exclusive use per school day for aquatic physical education courses. At the beginning of each school year, WCHS will provide their master schedule to the Village by July 1.

6. Use of Facilities.

A. The Parties agree that the Sport Complex Facilities will be available for use by the Parties in accordance with the Priority of Use at no cost or expense to either Party, except as otherwise provided for in this Agreement. Each Party's use of the Sport Complex Facilities shall be subject to and in accordance with (i) the terms and conditions of this Agreement, including but not limited to the Facility operating hours set forth in Exhibit "~~CA~~"; (ii) the Village's rules, regulations and policies; and (iii) all applicable local, state and federal laws. In the event that any part of the Sport Complex Facilities is unavailable for use by either Party ~~the Village~~ as a result of the need for unscheduled maintenance, emergency repairs or the occurrence of any force majeure event, including weather and the resulting condition of Facilities, or safety considerations, there shall be no liability for any proximate, direct or indirect loss, damage, cost or injury suffered by either Party.

B. The Board and the Village acknowledge that occasions may arise in which either Party may desire to use the Facilities at times and on days other than those set forth in Paragraph 5 above. They therefore agree to work cooperatively together to develop a Master Calendar for the use of the Facilities. ~~In furtherance of same, provide a written schedule of use for the Sport Complex Facilities to the Village with the athletic schedules for the following activities as described below:~~

~~Boys' Soccer schedule on or by October 24 of each year~~

~~Girls' Soccer schedule on or by January 15 of each year~~

~~Boys' and Girls' Track Schedules on or by March 14 of each year~~

C. 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.

D. Without waiving the right to sovereign immunity, the Parties acknowledge that the Board is 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 One Million Dollars (\$1,000,000) combined single limit for bodily injury or property damage and each Party 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 the Village of Wellington, Florida, its Elected and Appointed Officials and its Employees and Agents". The additional insured endorsement for the Board shall read "The School Board of Palm Beach County, Florida, its Elected and Appointed Officials and its 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 acknowledge and agree that the Board is self-insured for workers' 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 their respective insurance, self-insurance and/or sovereign immunity status, which the Parties agree to recognize as acceptable for compliance with 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. Village will fence the Sport Complex Facilities in order to separate them from the remainder of the WCHS campus for security purposes; and

F. Each Party ~~The Village~~ agrees to provide adequate supervision of its activities to prevent bodily harm, to the extent possible, to the users and damage to the Sport Complex Facilities, including police or other security, taking into consideration the types of activities planned and times during which the Facilities will be used, and each Party ~~the Village~~ shall be responsible for making sure all doors and gates are locked after its use.

G. The Parties shall work together to establish a "check-in" and "check-out" procedure for the use of the Sport Complex Facilities.

H. On each occasion, following each Party's use of the Sport Complex Facilities, the Facilities shall be returned to the same condition they were in when the use began and the Party using the Facilities shall cause to be deposited in provided containers or removed from the Facilities all waste, garbage and rubbish resulting from its use of the Facilities. Each Party shall maintain its own dumpsters and waste removal contracts, and the Village's dumpsters and water removal contract will be used by the Village.

7. Use of the Sport Complex Facilities by Village Recognized Recreation Providers.

A. The Board agrees to make the Sport Complex Facilities available for use by the Village Recognized Recreation Providers at no cost or expense to the Village ~~Recognized Recreation Providers~~ according to the Priority of Use, except as otherwise provided for in this Agreement. Use of the Sport Complex Facilities by the Village Recognized Recreation Providers shall depend on availability and 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 Facilities (available on Village's official website and promptly updated as changes are made); and (iii) all applicable local, state and federal laws. In the event that any part of the Sport Complex Facilities is unavailable for use by the Village Recognized Recreation Providers as a result of the need for unscheduled maintenance, emergency repairs or the occurrence of any force majeure event, including weather and the resulting condition of facilities, or safety considerations, there shall be no liability for any proximate, direct or indirect loss, damage, cost or injury suffered by the Village, other than to refund of funds, if any, paid in advance for the use of the Sport Complex

Facilities. The Sport Complex Facilities shall be available according to the Priority of Use, in accordance with the regular operating hours on Exhibit “_____”

B. Prior to being granted access to any part of the Sport Complex Facilities, each Village Recognized Recreation Provider shall

1. provide proof of insurance in the amounts listed below as required by the Board’s Director of Employee Benefits and Risk Management:

Commercial General Liability Insurance - The Village Recognized Recreation Provider shall have and maintain commercial general liability (CGL) insurance including contractual liability and products and completed operations insurance and shall be written on the most recent form of CG 00 01. The School Board of Palm Beach County, Florida shall be named as an additional insured under the CGL using ISO Additional Insured Endorsement CG 20 10 and CG 20 37 or their equivalent, providing additional insured coverage for both premises/operations and completed operations. This insurance including insurance provided under a commercial umbrella, if any, shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to or maintained by the School Board. Coverage shall be for bodily and personal injury and property damages. Limits of liability shall be set at \$1,000,000.00 per occurrence/\$1,000,000.00 aggregate. CGL must include Medical Expense, unless participant coverage is required). The Village Recognized Recreation Provider and its insurance carrier waive all subrogation rights against the School Board for all losses or damages that occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not. The School Board requires General Liability policies to be endorsed with CG 24 04 Waiver of Transfer of Rights of Recovery Against Others to Us or similar endorsement.

Workers’ Compensation - insurance coverage in accordance with and in compliance with Chapter 440, Florida Statutes.

- Employers’ Liability – insurance coverage with limits as follows:
- a) \$ 500,000 Bodily Injury by Accident for each accident
 - b) \$ 500,000 Bodily Injury by Disease, policy limit
 - c) \$ 500,000 Bodily Injury by Disease, each employee

Each Village Recognized Recreation Provider and its insurance carrier waive all rights against the School Board and its agents, officers, directors and employees for recovery of claims for bodily injury to the extent these injuries are covered by the workers’ compensation and Employers’ Liability Insurance.

Business Automobile Liability shall be required with limits of at least; Five Hundred Thousand Dollars (\$500,000) per occurrence for both bodily injury and property damage Combined Single Limit for commercially owned, hired and non-owned automobiles, with the School Board of Palm Beach County, Florida as the additional insured on the policy. Business auto coverage shall be written on the most recent form of ISO form CA 00 01 or a substitute providing equivalent liability coverage. In the event the Village Recognized Recreation Provider does not own any commercial vehicles, the Board will accept hired and non-owned coverage in the amounts listed above. In addition, the Board will require an affidavit signed by the Village Recognized Recreation Provider indicating the following:

“The Village Recognized Recreation Provider does not own any commercial vehicles. In the event, the Village Recognized Recreation Provider acquires any vehicles through the term of this Agreement, the Village Recognized Recreation Providers agrees to purchase “Any Auto” coverage as of the date of acquisition.”

Each Village Recognized Recreation Provider and its insurance carrier waive all rights against Board and its elected and appointed officials, agents and employees for recovery of damages to the extent these damages are covered by the business auto insurance maintained.

Participant Accident Coverage \$ 25,000
(Required if Village Recognized Recreation Provider utilizes the Facilities for athletic activities, events or team sports; including; games, camps or practice.)

In the event of loss, damage or injury to the Village Recognized Recreation Provider's property, the Village Recognized Recreation Provider shall look solely to any insurance in its favor without making any claim against the Board. Each Village Recognized Recreation Provider and its insurance carrier hereby waive any right of subrogation against the Board, for loss, damage or injury within the scope of the Village Recognized Recreation Provider's insurance, and on behalf of itself and its insurer, waives all such claims against the Board; and,

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 any way connected to the Village Recognized Recreation Provider's use of the Sport Complex Facilities; and

3. Provide adequate supervision of its own activities to prevent bodily harm, to the extent possible, to the users or damage to the Sport Complex Facilities, including police or other security as appropriate, taking into consideration the types of activities planned, and shall be responsible for making sure all doors and gates are locked after use ~~(due to the particular safety and security concerns of the public school system, the WCHS Supervising Police Officer shall review proposed uses of the Sport Complex Facilities by the Village Recognized Recreation Providers to determine whether police are necessary and the appropriate staffing levels if police are necessary);~~ and

4. Return the used facility of the Sport Complex Facilities in the same condition as it was accepted and to deposit in provided containers or remove all waste, garbage and rubbish resulting from the Village Recognized Recreation Provider's use of the Facilities, in accordance with the "check-in" and "check-out" procedure between the WCHS Principal and the Village; and

5. Notify the WCHS Principal and the Village's Director of Parks and Recreation or his designee of any damage to the Sport Complex Facilities resulting from the Village Recognized Recreation Provider's use of the Sport Complex Facilities and reimburse the Board for its the actual costs, if any, to repair the damage.

8. Concession Facilities.

As part of the Project, Village intends to construct concession facilities. Such concession stand will be used exclusively by the Village and Either Party and the WCHS may use the concession facilities in conjunction with their use of the Sports Complex Facilities and such use shall comply with the Palm Beach County Health Department's requirements. The Party using the Village concession facilities is entitled to keep the proceeds from the sales generated.

9. Maintenance/Repair of Sport Complex Facilities.

A. Village will maintain the Sport Complex Facilities, but not the football stadium (grandstands, press box, scoreboard), softball and baseball fields.

B. Village will maintain the artificial turf in conformance with Section 10, below, and will maintain the swimming pool to the Health Department Guidelines and will pay any fines or fees and permits associated with the swimming pool and related auxiliary structures and buildings.

C. Village will maintain the basketball courts, tennis courts, Jump field and Kick Wall.

10. Impact Attenuation Testing of Sports Fields Covered in Artificial Turf.

A. Turf field systems shall be tested by the Village annually in accordance with ASTM F1936 and ASTM F355 Procedure A, in which the missile is released from a free-falling drop height of 24", from the bottom of the missile face to the top of the turf field system, and allowed to impact the surface, recording the impact attenuation in Gmax.

B. When tested in accordance with ASTM F1936 and F355a, the average Gmax at any single test point shall be < 200 when tested to a free fall height of 24". If the average Gmax of one or more test points is ≥ 200, the surface system should be brought into compliance and re-tested for verification.

C. Village, at its sole cost and expense, will repair and replace the artificial turf as needed during the term of this Agreement.

11. Dispute Resolution.

In the event an issue arises that cannot be resolved between the WCHS Principal and the Director of Parks and Recreation, or his designee, regarding the use or availability of any portion of the Sport Complex Facilities, the dispute shall be referred to the Board's COO and the Village Manager, or his designee, who shall both make a good faith effort to resolve the dispute.

12. License.

Nothing in this Agreement shall be construed as granting the Village or any third parties a real property interest in any portion of the WCHS campus.

13. Default/Cure.

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 30 days' written notice to cure the default. In the event the defaulting Party fails to cure the default within the 30-day cure period, the non-defaulting Party shall be entitled to seek any remedy available to it at law or equity.

14. Modernization of WCHS

At such time that the Board schedules modernization/replacement of WCHS, Village agrees that the four new artificial turf fields may be used as temporary school facilities and that all recreational/athletic utilization of these fields by the Parties for the duration of the modernization/replacement project will be suspended. If constructed, the swimming pool, its auxiliary buildings and parking area will not be affected by modernization/replacement of WCHS and will remain operational.

15. 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 Wellington
12300 Forest Hill Blvd.
Wellington, FL 33414

With copies to:

Director of Parks and Recreation, Village of Wellington
11700 Pierson Road
Wellington, Florida 33414

and

Village Attorney, Village of Wellington
12300 Forest Hill Blvd.
Wellington, Florida 33414

IF TO BOARD:

School Board of Palm Beach County
Director of Planning and Intergovernmental Relations
3661 Interstate Park Road N, Suite 200
Riviera Beach, Florida 33404

With copies to:

School Board General Counsel
3300 Forest Hill Boulevard, Suite C-323
West Palm Beach, Florida 33406

And

Wellington High School Principal
2101 Greenview Shores Blvd.
Wellington, FL 33414

16. Governing Law and Venue.

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 terms of the Agreement will be held in Palm Beach County.

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, familial status, sexual orientation or gender identity or expression, 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. Conflict.

To the extent any term or provision of this Agreement conflicts with a term or provision of the 2016 ILA with respect to use of any Facilities, the terms and provisions of this Agreement shall control.

22. Incorporation by Reference.

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

23. 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.

24. 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.

25. 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.

26. 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 Statutes.

27. Effective Date.

This Agreement shall become effective when signed by both of the Parties, and filed with the Clerk of the Circuit Court in and for Palm Beach County.

28. Term.

The term of this Agreement ("Term") shall be for a period of thirty (30) years. However, in the event that the Swimming Pool is constructed, however, if the pool is not constructed on the WCHS campus by July 1, 202~~5~~², the Board shall have the option to terminate or renegotiate this Agreement after twenty (20) years from the date of approval, by the last Party to approve this ~~a~~Agreement.

29. Inspector General.

A. The Village agrees and understands that the School Board's Office of Inspector General ("School Board's Inspector General") shall have access consistent with Chapter 119, Florida Statutes (Florida's Public Records Act) to all papers, books, records, documents, information, personnel, processes (including meetings), data, computer hard drives, emails, instant messages, facilities or other assets owned, borrowed or used by the Village with regard to this Agreement. Village employees, vendors, officers and agents shall furnish the School Board's Inspector General with requested information and records within their custody for the purposes of conducting an investigation or audit, as well as provide reasonable assistance to the School Board's Inspector General in locating assets and obtaining records and documents as needed for investigation or audit relating to this Agreement. Furthermore, the Village understands, acknowledges and agrees to abide by School Board Policy 1.092(4)(d).

B. The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement and in furtherance thereof may demand and obtain records and testimony from the Contractor and its subcontractors and lower tier subcontractors who are awarded the work required to construct the Project. Village will ensure that the Contractor understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the municipality to be a material breach of the for the work to be performed on the Project justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code Section 2-421-2-440. Failure to cooperate with the Inspector General of Palm Beach County shall be in violation of Palm Beach Code, Section 2-421-2-440, and be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

30. No Third Party Beneficiaries.

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the Village and/or Board.

31. Liens.

The Parties' interest in the Sport Complex Facilities shall not be subject to liens arising from their construction, maintenance or use of the Sport Complex Facilities, or exercise of the rights granted hereunder. The Party against whom any lien is filed shall promptly cause any such lien imposed against the Sport Complex Facility relating to the construction, maintenance or use of Sport Complex Facilities under this Agreement to be discharged or transferred to bond.

32. No Agency Relationship.

Neither Party is an agent or servant of the other. No person employed by either Party to this Agreement, shall in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other Party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law or otherwise, except through and against the Party by whom they are employed.

33. Records.
Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney’s fees for non-compliance with that law.

34. Survival.
Provisions contained in this Agreement that, by their sense and context, are intended to survive the suspension or termination of this Agreement, shall so survive.

35. Waiver of Jury Trial.
EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

36. Alcohol and Tobacco Prohibited.
The manufacture, distribution, dispensation, possession, consumption or use of alcohol, tobacco products or nicotine of any kind or controlled substances (including any type of electronic cigarette) on Board-owned property is strictly prohibited and violation of this provision shall subject the user group to being banned from future use of the Sport Complex Facilities.

37. Jessica Lunsford.
All Village officers, employees and agents who are permitted access to any portion of the WCHS campus when students are present, who have direct contact with students or who have access to or control of school funds must undergo level 2 screening (“JLA Persons”). Level 2 screening consists of fingerprinting and a background check, as set forth in Section 1012.32, Florida Statutes. Neither the School Board, nor its members, officers, employees, nor agents, shall be liable under any legal theory for any claim whatsoever for the rejection of any Village officer, employee or agent (or discontinuation of the officer, employee or agent’s services) on the basis of these compliance obligations. The Village agrees that no JLA Person who has been convicted or who is currently under investigation for a crime delineated in Section 435.04, Florida Statutes, will be permitted access to the WCHS campus when students are present, who have direct contact with students or who have access to or control of school funds.

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

VILLAGE OF WELLINGTON	SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
By: _____ Anne Gerwig, Mayor	By: _____ Frank A. Barbieri, Jr., Esq., Chairman
ATTEST:	ATTEST:
_____ Chevelle D. Nubin, Village Clerk	_____ Donald E. Fennoy II, Ed. D., Superintendent
Date: _____	Date: _____
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Laurie S. Cohen, Village Attorney

Blair LittleJohn, Board Attorney

~~Exhibit "A"~~

~~School Board of Palm Beach County Standard Facility Operating Hours~~

~~The Board agrees to make the WCHS Facilities available for use by the Village in accordance with this Agreement during the following operational hours for indoor and outdoor Board Facilities:~~

~~When School is in session:~~

~~Weekdays (Monday through Friday): _____ From the close of the school day until 9:30 pm~~

~~Saturdays: _____ From 8:00 am to 9:30 pm~~

~~Sundays: _____ From 8:00 am to 1:00 pm~~

~~When School is not in session:~~

~~Spring and Summer Break):~~

~~Weekdays (Monday through Thursday): _____ From 8:00 am until 9:30 pm~~

~~Fridays, Saturdays, Sundays: _____ Closed~~

~~School Holidays and Winter Break:~~

~~The Board Facilities will be closed the day of the school holiday plus any immediately preceding or following weekend days (i.e. the weekend preceding a Monday National Holiday or following Thanksgiving. The Board Facilities will also be closed for the entire Winter Break (traditionally beginning on the Saturday prior to Christmas and extending through the Sunday following New Year's). As to the WCHS Stadium Field, use during weekends, Spring and Summer Break, School Holidays and Winter Break shall be by mutual agreement between the Village, the WCHS and the Board's COO, during the hours of 7:00am to 10:00pm.~~

~~The identified maximum operational hours may be amended from time to time upon the mutual agreement of the Board's COO and the Village Manager, or his or her designee.~~

Exhibit “A”

Sports Complex at WCHS Operating Hours

The Board agrees to make the Sports Complex at WCHS available for use by Wellington in accordance with this Agreement during the following operational hours:

When School is in session:

1. Four artificial turf fields:

Weekdays (Monday through Friday): From 6:00 pm to 11:00 pm

Saturdays: From 8:00 am to 11:00 pm

Sundays: From 8:00 am to 11:00 pm

2. Stadium field:

Saturdays: From 8:00 am to 11:00 pm

Sundays: From 8:00 am to 11:00 pm

When School is not in session (Spring Break, Winter Break, Holidays):

1. Stadium field and 4 artificial turf fields:

Weekdays (Monday through Friday): From 8:00 am to 11:00 pm

Saturdays: From 8:00 am to 11:00 pm

Sundays: From 8:00 am to 11:00 pm

When School is not in session (Summer Break):

1. 3 artificial turf fields:

Weekdays (Monday through Friday): From 8:00 am to 11:00 pm

Saturdays: From 8:00 am to 11:00 pm

Sundays: From 8:00 am to 11:00 pm

2. 1 artificial turf field and Stadium Field:

Weekdays (Monday through Friday): Conclusion of School activity to 11:00 pm

Saturdays: From 8:00 am to 11:00 pm

Sundays: From 8:00 am to 11:00 pm

[†]On weekdays and weekends: 8AM availability times refer to program activity start times. Maintenance and operations activities required for programming may start at 6AM.

EXHIBIT “B”

SPORT COMPLEX FACILITIES CONCEPTUAL PLAN

Insert Aerial

EXHIBIT “C”

**PROJECT
BUDGET FOR WELLINGTON HS SPORT COMPLEX**

INSERT BUDGET

PROPOSED PROJECT SCHEDULE

INSERT PROPOSED SCHEDULE