

**INTERLOCAL AGREEMENT BETWEEN CITY OF GAINESVILLE AND
SCHOOL BOARD OF ALACHUA COUNTY FOR PUBLIC USE OF
HOWARD BISHOP MIDDLE SCHOOL RECREATION FACILITIES**

This INTERLOCAL AGREEMENT is entered into this ____ day of _____, 2021 by and between the City of Gainesville, a Florida municipal corporation (“City”), and the School Board of Alachua County, a Florida district school board (“School Board”), collectively the "parties."

WITNESSETH:

WHEREAS, Chapter 163, Florida Statutes, authorizes public agencies, including cities and school boards, to enter into agreements to provide services and to jointly exercise the power, privilege, or authority they share in common and which each might exercise separately; and

WHEREAS, the City and School Board wish to coordinate the recreational facilities and activities of the City and School Board in order to prevent duplication and to provide more fully for the recreational needs of the neighbors of our City and School Board at the least expense; and

WHEREAS, the City has the experience, expertise, staff and abilities to support the use of School Board recreational facilities for public use during non-school hours; and

WHEREAS, the School Board desires to offer certain outdoor active recreational facilities at Howard Bishop Middle School, located at 1901 N.E. 9th Street, Gainesville, Florida 32609, as shown in Exhibit A, for use and benefit of the general public, while retaining control of these facilities; and

WHEREAS, the Wild Spaces and Public Places half cent sales tax was passed by the voters in 2016 for certain improvements to the recreational facilities; and

WHEREAS, the City agrees to provide funding from Wild Spaces and Public Places as part of the planned school improvement project in return for the School Board providing public access to said recreational facilities.

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

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein.
2. **Agreement.** The School Board agrees to allow the general public, at no cost to the City, use of the outdoor active recreational track, tennis courts, pickleball courts and basketball courts located at Howard Bishop Middle School, 1901 N.E. 9th Street, Gainesville, Florida 32609, as shown in **Exhibit A** attached hereto and incorporated herein (collectively hereinafter referred to as the "Facility"). This Agreement is for the limited allowed use of the Facility and does not provide for public access to other areas of Howard Bishop Middle School.
 3. **Term.** This Agreement shall take effect upon execution and shall remain in effect for ten (10) years, unless earlier terminated in accordance with paragraph 7, below.
 4. **City's Responsibility.**
 - a) The City shall provide funding in the amount of \$250,000.00 for the renovations of the Facility track, tennis courts and/or basketball courts utilizing the full amount for the highest prioritized of the foregoing improvements as determined by the School Board. After execution of this Agreement by both parties, the School Board will send an invoice to the City and the City agrees to provide such funds to the School Board. The City will make payment on the invoice in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. The School Board shall be responsible for spending the \$250,000.00 in compliance with this Agreement, Section 212.055(2), Florida Statutes, and the November 8, 2016 referendum requirement that "Wild Spaces Public Places" funds shall be used to "...create, improve and maintain parks and recreational facilities." If the any of the \$250,000.00 are determined to not be spent in accordance with the referendum or statute, or if any of said funds remain unexpended six (6) months from the effective date of this Agreement, the School Board shall promptly refund such funds or portion of funds to the City.
 - b) The City will periodically inspect and restripe the track as necessary, post construction, for a period of at least ten (10) years, to maintain this investment.
 - c) The City agrees not to make any improvements or additions or to install any fixtures at or in the Facility, without obtaining the prior written authorization of the School Board, which will not be unreasonably withheld. If authorized to be installed, any improvements, additions, or fixtures shall become the property of the School Board.
 5. **School Board's Responsibility.** The School Board agrees, at no cost to the City, to allow the general public to use the Facility during the City park hours provided in Section 18-

19 of the Gainesville City Code that fall outside the school hours for Howard Bishop Middle School. The Parties agree that the Facility and school grounds will be used for after school programs and occasional school related events. The school will submit dates in advance to the City. In the event of a conflict in the use during after school hours of the Facility and school grounds between the School Board and the City, the School Board shall have first priority for its event. The School Board agrees to maintain the school grounds so as to provide safe, usable, clean facilities to the general public during non-school hours. This shall include summer months, outside of the academic school year. The Parties agree to meet and discuss this agreement within six months of its execution to determine if further negotiations and adjustments are needed to address the level of use and maintenance experienced at the recreational facilities. The parties agree to engage in a good faith evaluation of the respective responsibilities of the Parties based on the level of use experienced at the facilities.

6. **Liability.** The Parties shall each be responsible for any and all risks of personal injury and property damage attributable to the acts or omissions of their own officers, employees, servants and agents. The City shall assume liability for injuries or damage that occurs at the Facility during the City's park hours which are outside of the school hours for Howard Bishop Middle School that are attributable to the general public's use of the Facility. The City shall not be liable for injuries or damages that occur at the Facility during school hours for Howard Bishop Middle School, or for hours outside of City park hours. The City shall not be liable for injuries or damages that occur (i) as part of and during an after school program held at Howard Bishop Middle School or (ii) a school related event held at the Facility. This provision shall survive the termination of the Agreement. Nothing in this Agreement shall be interpreted as a waiver of either party's sovereign immunity under law.

7. **Default and Termination.** Either party may terminate this Agreement upon sixty (60) days written notice to the other party; however, once payment has been received by the School Board pursuant to paragraph 4 above and construction has started on the recreational Facility, this Agreement may not be terminated without a written agreement executed by both parties. The failure of either party to comply with any provision of this Agreement shall place such party in default. Prior to terminating this agreement, the non-defaulting party shall notify the defaulting party in writing, making specific reference to the provision which gave rise to the default. The defaulting party shall then be entitled to a period of fifteen (15) days in which to cure the default.

In the event the default is not cured within the 15 day period, this Agreement may be terminated. In the event this Agreement is terminated by the City due to default by the School Board, the School Board shall refund the \$250,000.00 to the City, prorated by the ratio of [(10 years minus number of years the Facility was made available for public recreational use pursuant to this Agreement) divided by 10].

8. **Notices.** Except as otherwise provided herein, any notice of default or termination, from either party to the other party shall be in writing and sent by certified mail, return receipt requested or personally delivered with signed proof of delivery. The City's and School Board's representatives are:

City:	City Manager, City of Gainesville 200 East University Avenue Gainesville, FL 32601	and	Director, Parks, Recreation and Cultural Affairs, City of Gainesville PO Box 490, Station 30 Gainesville, FL 32627
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School Board:	Suzanne M. Wynn, ACPS Facilities Director of Community Planning Fred C. Sivia Center 3700 NE 53 rd Avenue Gainesville, FL 32609
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9. **Amendments.** This Agreement may be amended by mutual written agreement of the parties and may be changed only by such written amendment.

10. **Laws and Regulations.** The parties will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this Agreement. The parties are presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this Agreement. If either party is not familiar with state and local laws, ordinances, code rules and regulations, the party remains liable for any violation and all subsequent damages or fines.

11. **Assignment.** The parties shall not assign, convey, pledge, sublet, or otherwise dispose of, any interest in this Agreement and shall not transfer any interest in same, whether by assignment or notation, without the prior written consent of the other party.

12. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.

13. **Severability.** If any provision of this Agreement is declared void by a court of law, all other provisions will remain in full force and effect.

14. **Non Waiver.** The failure of either party to exercise any right in this Agreement will not waive such right in the event of any further default or non-compliance.

15. **Captions and Section Headings.** Captions and section headings used herein are for convenience only and shall not be used in construing this Agreement.

16. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this Agreement.

17. **Governing Law and Venue.** This Agreement is governed in accordance with the laws of the State of Florida. Venue is in Alachua County.

18. **Attachments.** All exhibits attached to this Agreement are incorporated into and made part of this Agreement by reference.

19. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior written or oral agreements, understandings, or representations.

20. **Recording of Agreement.** The City, upon execution of this Agreement by all parties, shall record this Interlocal Agreement in the public records of Alachua County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for the uses and purposes expressed herein, on the day and year first above written.

ATTEST:

**SCHOOL BOARD OF ALACHUA
COUNTY, FLORIDA**

Carlee Simon, Ph.D.
Superintendent

Leanneta McNealy, Chair

Approved as to form and legality:

Date: _____

Francine Turney
Staff Attorney

ATTEST:

CITY OF GAINESVILLE

Omichele D. Gainey
City Clerk

Lauren Poe, Mayor

Approved as to form and legality:

Date: _____

City Attorney