

**INTERLOCAL AGREEMENT BETWEEN
THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA, AND
MIDDLE VILLAGE COMMUNITY DEVELOPMENT DISTRICT
REGARDING USE OF DISTRICT RECREATIONAL FACILITIES**

This Agreement ("Agreement") is effective *nunc pro tunc* to August 1, 2020, and is by and between:

MIDDLE VILLAGE COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, with offices at 475 West Town Place, Suite 114, St. Augustine, Florida 32092 (the "District"),

and

THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA ("School Board"), for the use and benefit of the Oakleaf High School Swim Team ("Swim Team"), 900 Walnut Street, Green Cove Springs, Florida 32043 (the School Board and the Swim Team together with the District, the "Parties").

RECITALS

WHEREAS, it is the purpose and intent of this Agreement to permit and authorize the School Board (specifically Oakleaf High School) and the District to make the most efficient use of their respective resources, authority, and capabilities by enabling them to cooperate on the basis of mutual advantage and to achieve the results provided in this Agreement pursuant to Section 163.01, *Florida Statutes*, known as the Florida Interlocal Cooperation Act of 1969 ("Cooperation Act"); and

WHEREAS, it is the purpose of the Cooperation Act to provide a means by which the School Board and the District may exercise their respective privileges and authority which they may have separately, but which pursuant to this Agreement and Cooperation Act they may exercise collectively; and

WHEREAS, the District is a special-purpose unit of local government established pursuant to and governed by Chapter 190, *Florida Statutes*; and

WHEREAS, the District owns, operates, and maintains certain recreational facilities, including a competition pool ("Competition Pool"), at the facility known as the Oakleaf Amenity Center (the "Amenity Facility"); and

WHEREAS, the School Board, (specifically Oakleaf High School) desires to make use of the Competition Pool for swim team practices and the hosting of swim meets; and

WHEREAS, the District is willing to allow the School Board to make use of the Competition Pool for swim team practices and swim meets, provided that such use does not

impede the operation of the Amenity Facility as a public improvement and provided that the Swim Team complies with the provisions set forth herein, including but not limited to the special provisions for usage during the COVID-19 pandemic; and

WHEREAS, the District and the Double Branch Community Development District have previously entered into that certain "Interlocal Agreement Between Double Branch Community Development District and Middle Village Community Development District Regarding the Reciprocal Usage of Recreational Facilities," dated December 23, 2003, which grants the residents and non-resident fee payers of each district the right to use the recreational facilities of the other; and

WHEREAS, the District's Board of Supervisors agrees that it is to the benefit and in the best interest of the District's residents and non-resident fee payers to allow the School Board the ability to use the Competition Pool under the terms and conditions set forth below; and

WHEREAS, the District and the School Board warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

NOW, THEREFORE,, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Section 1. Recitals. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

Section 2. Term. This Agreement shall be effective *nunc pro tunc* to August 1, 2020, and shall terminate on November 30, 2020, unless terminated early in accordance with Section 8 below. However, the covenants and obligations of School Board contained in this Agreement shall survive termination for acts and omissions which occurred during the effective term of this Agreement.

Section 3. Usage by Swim Team

Usage; Generally. The District hereby grants to the Swim Team a license to use the Competition Pool for swim team practices and swim team meets in accordance with the schedules attached hereto as Exhibit A, as coordinated between the District's representative and the Swim Team representative, and with the guidelines provided in Exhibit B, both of which are incorporated herein by this reference ("License"). The License to use the Competition Pool is limited to the hours provided in such schedules. In consideration of said use of the Competition Pool and Amenity Facility, School Board and Swim Team agree to the following conditions:

(i) Access to the Amenity Facility is limited to the Competition Pool, the pool decks, Amenity Facility restrooms, and the parking lot serving the Amenity Facility. No other use of, or access to, the District's recreational facilities is permitted.

(ii) The District hereby designates the District Manager or his or her designee as the District's representative.

(iii) Swim Team's use of Competition Pool shall be in conjunction with the use of the Amenity Facility by other members of the public and by other swim teams, if any, and the Swim Team use shall not interfere with the operation of the Amenity Facility as a public improvement.

(iv) All use of the Competition Pool shall be subject to the policies and regulations of the District and the Guidelines for the Swim Team Usage and Guidelines for Swim Team Meets, which are incorporated herein and attached as Exhibit B.

(v) The District shall have the right to take such actions as are necessary to preserve the health, safety and welfare of its residents, landowners, lands, and facilities.

Usage During the COVID-19 Pandemic. Effective immediately and until the conclusion of the COVID-19 pandemic, the Swim Team must implement the following measures:

(vi) The Swim Team is responsible for enforcing social distancing among its participants, consistent with all federal, state, and local recommendations and/or requirements, guidelines, and best practices, including but not limited to those promulgated by the State of Florida through executive orders or otherwise, by the Center for Disease Control and Prevention, and by USA Swimming, Inc., the latter of which are available at the following links: <https://www.usaswimming.org/home/covid-news> and <https://cdn.swimswam.com/wp-content/uploads/2020/05/facility-reopening-plan-guidelines.pdf>.

(vii) The Swim Team shall arrange the swimmers per lane to allow proper social distancing, while complying with the aforementioned guidelines. If participants are unable to comply with the guidelines, Swim Team shall limit swimmers per lane to that required for compliance with stated regulations, which may change from time to time.

(viii) The School District shall provide to the District a Middle Village Community Development District a Consent and Release from Liability ("Release"), in the form attached hereto as Exhibit C, fully executed by each student and the parent of such student, prior to that student's use of the Competition Pool for swim practices or swim meets. The School District shall not permit any student to use the Competition Pool for the purposes set forth in this Agreement without first providing the District with a fully executed Release for that student. Should the School District fail to comply with Section 3 paragraphs (vi) through (xiii) of this Agreement, the District may immediately terminate this Agreement, notwithstanding any provisions to the contrary.

(ix) Swim Team acknowledges and understands that the Swim Team agrees to implement a safe and reasonable means to facilitate the entry and exit of swimmers between practice groups.

(x) Parents, guests and other spectators shall be prohibited from the Amenity Facility during practices, but are allowed to attend meets subject to the conditions of Exhibit B and other terms of this Agreement so long as COVID-19 conditions continue and there is a public health emergency declared by federal, state or local governments.

(xi) Before allowing any individual to access the District's Competition Pool, Amenity Facility, or other facilities, the Swim Team shall ask the following screening questions, and if the answer to any is "yes," prevent that individual from accessing the Competition Pool, Amenity Facility, or other facilities:

Do you have or have you had in the past 48 hours a cough, shortness of breath, fever (100.4+), chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss/change in taste/smell, or diarrhea?

Have you been in close contact (within 6 feet for at least 5 minutes) with anyone with the before-mentioned symptoms?

Have you been exposed to anyone who tested positive for COVID-19 in the past 14 days?

Have you been exposed to anyone who is currently waiting for COVID-19 test results?

Have you traveled internationally or been on a cruise during the past 14 days?

Have you traveled to an out-of-state hotspot or to an in-state hotspot (Miami-Dade, Broward or Palm Beach counties) during the past 14 days?

(xii) In the event that any individual associated with the Swim Team who has used the District's Competition Pool, Amenity Facility, or other facilities tests positive for COVID-19, the Swim Team shall immediately notify the District and cease all use of the Competition Pool, Amenity Facility, or other facilities until the District notifies the Swim Team that use may resume. The School District will take all necessary precautions to limit direct exposure of any student, parent, or coach while on property to help with limiting any possible spread. The School District will instruct any student, parent, or coach to remain off district property until cleared by both the School District to return to work and by the District based on the District's current employee policies.

(xiii) Swimmers shall show up changed and ready to swim and may not change at the District's facilities. Use granted herein is limited to the pool deck and the pool and no use of locker room or similar indoor facilities is permitted. Swimmers shall bring their own equipment and not use shared equipment.

Section 4. Care of the Property. School Board agrees to use all due care to protect the property of the District, its residents, and landowners from damage, and to require any meet participants invited to the Amenity Facility to do the same. School Board agrees that it shall assume responsibility for any and all damage to the District's facilities or lands as a result of School Board's use under this Agreement other than damage which may be attributable to ordinary wear and tear as determined by the District. In the event that any damage to the District's facilities or lands occurs, the District shall notify School Board of such damage and shall allow the School Board's agents or employees the opportunity to examine the damage prior to repair. School Board agrees that the District may make whatever arrangements necessary, in its sole discretion, to promptly make any such repairs as is necessary to preserve the health, safety and welfare of the District's lands, facilities, residents and landowners. School Board agrees to reimburse the District for any such repairs within thirty (30) days of receipt of an invoice from the District reflecting the cost of the repairs made under this Section.

Section 5. Enforcement. A default by either Party under this Agreement shall entitle the other Party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief, and specific performance.

Section 6. Limitation of Liability and Insurance.

Notwithstanding any terms of this Agreement to the contrary, the Parties agree that nothing herein shall be construed as a waiver of either the School Board's or the District's sovereign immunity or limits of liability beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute. The School Board, subject to the School Board's self-insured retention, agrees and covenants to provide liability insurance with limits of One Million Dollars (\$1,000,000.00) applicable to bodily injury, sickness or death in any one occurrence and One Million Dollars (\$1,000,000.00) for loss or damage to property in any one occurrence and shall provide evidence of such insurance in the form of an insurance certificate prior to commencing use of the District's facilities under this Agreement. Additionally, the School Board agrees that its policy may not be canceled during the term of this Agreement without at least thirty (30) days' written notice to the District.

Notwithstanding any language in this section to the contrary, nothing in this indemnification agreement shall be construed or interpreted to increase the scope or dollar limit of the Swim Team's or the School Board's liability beyond that which is set forth in Section 768.28, *Florida Statutes*, or to otherwise waive the Swim Team's/School Board's sovereign immunity, or to require the Swim Team/School Board to indemnify District or any other person, corporation, or legal entity of any kind or nature whatsoever for injury or loss resulting from any acts other than the negligent acts of the Swim Team or the School Board or its agents or employees. The Swim Team and the School Board shall not indemnify any party for attorney's fees or costs other than those court costs which are set forth by Florida Statute or other Florida law as recoverable costs of court.

Section 7. Recovery of Costs and Fees. In the event either Party is required to enforce this Agreement by court proceedings or otherwise, then the substantially prevailing party

shall be entitled to recover from the other party all costs incurred, excluding reasonable attorneys' fees.

Section 8. Termination. Both Parties shall have the right to terminate this Agreement at any time without cause with written notice. However, the covenants and obligations of School Board contained in this Agreement shall survive termination for acts and omissions which occurred during the effective term of the agreement.

Section 9. Entire Agreement. This instrument, together with the attached Exhibits, shall constitute the final and complete expression of the agreement between the Parties relating to the subject matter of this Agreement.

Section 10. Amendment. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing that is executed by both Parties hereto.

Section 11. Assignment. Neither the District nor the Swim Team may assign their rights, duties, or obligations under this Agreement or any monies to become due hereunder without the prior written approval of the other. Any attempted assignment without such written approval shall be void.

Section 12. Applicable Law. This Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the State of Florida. The Parties consent to and agree that the exclusive venue for any litigation arising out of or related to this Agreement shall be in a court of appropriate jurisdiction, in and for Clay County, Florida.

Section 13. Notices. All notices, requests, consents, and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by overnight delivery service or First Class Mail, postage prepaid, to the Parties, as follows:

1. If to Swim Team: Oakleaf High School Swim Team
4035 Plantation Oaks Boulevard
Orange Park, Florida 32065
Attn: Kate Schwartz, Swim Team Coach

With a copy to: J. Bruce Bickner, Attorney for
The School Board of Clay County, Florida
900 Walnut Street
Green Cove Springs, Florida 32043
2. If to District: Middle Village Community
Development District
475 West Town Place, Suite 114
St. Augustine, Florida 32092
Attn: District Manager

With a copy to:

Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: Jason M. Walters, District Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the School Board/Swim Team may deliver Notice on behalf of the District and the School Board/Swim Team. Any party or other person to whom Notices are to be sent or copied shall notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days' written notice to the parties and addressees set forth herein.

Section 14. Severability. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

Section 15. Authorization. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the School Board, both the District and the School Board have complied with all the requirements of law, and both the District and the School Board have full power and authority to comply with the terms and provisions of this instrument.

Section 16. Headings for Convenience Only. The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

Section 17. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

Section 18. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, *Florida Statutes*), and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

Section 19. Filing. After approval of this Agreement by the respective governing bodies of the School District and the District, and its execution by the duly qualified and

authorized officers of each of the Parties, the District shall cause this Agreement to be filed with the Clerk of the Circuit Court of Clay County, Florida, in accordance with the requirements of Section 163.01(11), *Florida Statutes*.

Section 20. Cancellation. Both Parties shall have the right to cancel this Agreement at any time without cause. However, the covenants and obligations of the School Board contained in sections 3, 4, 5, 6 & 8 shall survive termination for acts and omissions that occurred during the effective term of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have signed and sealed this Agreement on the day and year first written above.

THE SCHOOL BOARD OF CLAY
COUNTY, FLORIDA

By _____
CAROL Y. STUDDARD, Chairperson
Dated: _____

Witness:

By _____
BONNIE O'NORA
Secretary/Assistant Secretary

Dated: _____

Attest:

By _____
DAVID S. BROSKIE, Superintendent of
Schools

Dated: _____

[Signatures continued on next page]

Reviewed for legal sufficiency by:

J. BRUCE BICKNER, Attorney for The School
Board of Clay County, Florida

Dated:_____

MIDDLE VILLAGE COMMUNITY
DEVELOPMENT DISTRICT

By_____

Chairperson, Board of Supervisors

Dated:_____

Witness:

By_____

Attachments:

Exhibit A Swim Team Practice and Meet Schedules
Exhibit B Guidelines for Swim Team Usage
Exhibit C Form of Waiver

EXHIBIT A

SWIM TEAM PRACTICE AND MEET SCHEDULES

[To be attached]

EXHIBIT B

Guidelines for Swim Team Usage

All Swim Team usage of Competition Pool must be pre-scheduled with District staff prior to the beginning of practices.

Usage of the District facilities is limited to the Competition Pool/Amenity Facility named in the Agreement and this exhibit ONLY. The Swim Team shall not have access to any other District's recreational facilities, including but not limited to the clubhouse.

Spectators that are not District residents may be present and are allowed to attend Swim Team competitions subject to the conditions of this Agreement. However, the District, in its sole discretion, reserves the right to limit the number of such spectators (1) should the Aquatic Facilities exceed then-effective occupancy capacity or (2) should it be necessary to protect the health, safety, or welfare of the District, its landowners, residents or its guests, or the District property. Notwithstanding the foregoing, parents, guests, and other spectators are prohibited from attending competitions and meets so long as COVID-19 conditions continue and there is a public health emergency declared by federal, state, or local governments.

Spectators and/or guests that are not District residents shall not be present during swim practices.

Swim Team is responsible for ensuring that Swim Team members, visiting teams, guests, and spectators, as applicable, abide by all District rules and policies, including but not limited to COVID-19 sanitation, social distancing and other requirements.

No Swim Team practices may be held on weekends or on days or times that the family pool is closed UNLESS the practices are held prior to facility opening to the public, or otherwise as permitted by the District. On those days, the Swim Team shall be responsible straightening any chairs, disposing of trash in trash receptacles, general clean-up after each practice, and returning the Amenity Facility to the same condition as before the practice started. Other restrictions may apply during the COVID-19 public health emergency, or as otherwise required by the District.

No outside vendors will be allowed to sell food at any time.

Swim Team roster must be provided to the District 15 days prior to practices beginning or as soon as practicable. Roster must include all coaching staff.

The District reserves the right to retain a security guard or guards for the swim meets at Swim Team's expense if the District, in its sole and unrestricted discretion, deems it desirable.

Swim Team Members, visiting teams or spectators are prohibited from parking on private property.

The Agreement with the District, the School Board, and the Swim Team must be signed and provided to the District 15 days prior to practices beginning or as soon as practicable.

Proof of insurance must be provided to the District prior to practices beginning or as soon as practicable.

EXHIBIT C

RELEASE FROM LIABILITY AND HOLD HARMLESS AGREEMENT

I acknowledge that I have freely chosen to have my child participate in certain recreational activities (the “Activities”) sponsored by the Oakleaf High School Swim Team (“Swim Team”) at the Middle Village Community Development District (“District”) Amenity Facility (“Facility”). I understand that the District and the Swim Team have taken reasonable precautions to protect parents, participants, staff, and spectators from exposure to COVID-19 during these Activities. Those measures include, but are not limited to, verbal screening of attendees and staff and reasonable enforcement and implementation of social distancing and sanitization.

I agree that participation in the Activities, may result in risk of exposure to COVID-19 in spite of the above measures, and I assume any such risk and accept full responsibility for all medical expenses for any injuries, illness, or exposure I might receive by reason of my attendance and/or participation.

By signing this Acknowledgment and Release, I also hereby release the District and its Supervisors, officers, staff, employees, agents, assigns and volunteers (“Released Parties”) from and against any and all claims, demands, actions, complaints, suits or other forms of liability that any of them may sustain arising out of or related to, wholly or in part by, my or my child(ren)’s (a) participation in the Activities, (b) failure to comply with the measures imposed by the Clay County School Board, the Swim Team, or the District, (c) failure to comply with local, state, and federal laws and policies, procedures, effective guidance regarding COVID-19, and the District amenity rules and policies; or (d) any damage, injury, or illness caused by me or my child(ren) (together, the “Released Claims”).

I, the undersigned, acknowledge and understand that neither the Oakleaf High School Athletic Association (“OHSAA”), the Clay County School District nor personnel affiliated therewith, including coaches, are affiliated in any way with the Middle Village Community Development District (“District”) and that the District makes no representations concerning said personnel’s qualifications or ability to coach, teach, or lead the swim practices or swim meets to be held at the District’s pool (“Swim Team Activities”). I hereby agree to defend, indemnify, waive, release and forever discharge the Middle Village Community Development District and its present, former and future supervisors, agents, officers and staff, from all claims or demands for damages or injury, death, loss to person or property, liabilities and/or expenses related in any way to participation in Swim Team Activities by the above-named swimmer or to any other use of the District’s facilities, including, but not limited to, the swimming pools, pool deck, restrooms, and parking lots.

I hereby acknowledge that the swimmer named above is physically fit and mentally capable of participating in all Swim Team Activities I acknowledge execution of the attached OHSAA Consent and Release from Liability Certificate, Florida High School Athletic Association Consent and Release from Liability Certificate and I agree and acknowledge that all

representations, waivers, releases, acknowledgments, agreements, and authorizations made or granted therein shall apply to the District to the same extent as if the District was named therein, with respect to the above-named swimmer's use of the District's facilities. I further recognize that I have the right to refuse to execute this form. However, should I so refuse, the District has the right to refuse to allow the named swimmer to participate in the Swim Team Activities.

I confirm that I have carefully read this Acknowledgement and Release, fully understand the above conditions, and agree to its terms knowingly and voluntarily. I also confirm that I am the parent or legal guardian of the child(ren) named below and that I am 18 years of age or older.

IN WITNESS WHEREOF, I have signed this Acknowledgement and Release on this _____ day of _____, 2020.

SWIMMER PRINTED NAME: _____

SWIMMER SIGNATURE: _____

PARENT PRINTED NAME: _____

PARENT SIGNATURE: _____