

USE AGREEMENT

between

CITY OF HAINES CITY

and

POLK COUNTY PUBLIC SCHOOLS

for Davenport High School Swim Team

This Agreement, made and entered into this _____ day of _____, 2022, by and between the CITY OF HAINES CITY, FLORIDA, a municipal corporation of the State of Florida (hereinafter the "CITY"), through its City Commission;

AND

POLK COUNTY PUBLIC SCHOOLS , hereinafter referred to as "USER" whose address is c/o Davenport High School, 4525 County Road 547, Davenport, FL 33837.

WITNESSETH

WHEREAS, the City is owner of certain real property located in Haines City, Florida, commonly known as LAKE EVA AQUATIC CENTER whose address is 321 S. 6th STREET, HAINES CITY, FLORIDA, referred to hereinafter as "Facility"; and

WHEREAS, USER, for the benefit of Davenport High School, desires to utilize certain amenities located at the facility for purpose hereinafter set forth; and

WHEREAS, the City is devoted to the provision of services and programs pursuant to the enhancement of youth recreational programs and physical fitness.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. Terms. The term of this agreement shall commence on execution of the agreement and shall terminate on December 1, 2022.
2. Use of Property. The City agrees to permit USER to utilize the facility for the purpose of providing High School competition swimming programs in the Haines City area subject to the terms and conditions set forth herein.

3. Guideline and Non-Exclusive Rights. This agreement is specifically conditioned upon USER continuing to run its program in such a manner that USER activities are open to all eligible youth that wish to participate regardless of ability, sex, religion, or race. In the event that the USER changes this policy, the agreement may be terminated immediately. This agreement may not be assigned or transferred in any manner by USER. Any such transfer of assignment is strictly prohibited. This agreement shall be binding upon the parties hereto, their successor and assigns. Any previously existing oral agreement between the parties shall be terminated as of the date of this agreement and shall be deemed hereafter null and void and no further force and effect whatsoever.
4. Certification. The City, through the City of Haines City Parks and Recreation Department, require each coach/assistant coach/ manager of the USER to be certified in CPR, First Aid, and Water Safety. The certifications must be current and copies produced before entering this agreement.
5. Indemnification and Sovereign Immunity.
 - a. To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the City agrees to hold harmless and shall indemnify the Board from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney's fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the City while in the performance of this Agreement, subject to applicable law including Section 768.28, Florida Statutes regarding governmental agency liability.
 - b. To the extent permitted by Florida law and without waiving any statutory and constitutional sovereign immunity protections, the Board agrees to hold harmless and shall indemnify the City from any and all claims and all manner of action and actions, losses, demands, damages, penalties and expenses including reasonable attorney's fees, which may result from, or arise out of the intentional or negligent acts of the members, employees, appointees or agents of the City while in the performance of this Agreement, subject to applicable law including Section 768.28, Florida Statutes regarding governmental agency liability.
 - c. Nothing herein shall be deemed a waiver, express or implied, of either parties' sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise. To the extent anything contained in this Agreement constitutes a waiver of sovereign immunity, such terms and conditions shall be interpreted to the fullest extent

possible to effectuate the intent of the parties, but deleting any terms or conditions which would constitute a waiver of sovereign immunity. Nothing herein shall be construed as consent by either party to be sued by third parties in any matter arising out of any contract, act or action.

- d. All of the respective privileges and immunities from liability, exemptions from laws, ordinances, rules, and all pensions and relief, disability, worker's compensation, and other benefits, as held by each party, respectively, shall be unaffected by this Agreement.

- e. Persons employed by the Board or the City, in the performance of services and functions pursuant to this Agreement, shall have no claim on the other party to this Agreement for pension, worker's compensation, unemployment compensation, civil service, or any other employee rights or privileges granted by operation of law or otherwise to officers and employees of the other party to this Agreement.

- f. The parties further acknowledge and agree that the School Board is self-insured for claims. The self-insured amount of the School Board is \$200,000 per Claim and \$300,000 per incident. The parties agree that the School Board's liability shall not exceed these amounts.

6. Communication.

- a. The head coach of the team/program, athletic director or his/her designee in the absence shall be the official spokesperson for communication purposes between the City of Haines City Parks and Recreation Department and USER. The head coach, athletic director, or his/her designee will be _____, telephone number (____) ____ - _____.

- b. The City's Contract Coordinator during the performance of services pursuant to this Agreement shall be the CITY'S Parks and Recreation Director and Deputy Parks and Recreation Director, telephone number, (863) 421-3700.

7. Maintenance.

- a. The City will maintain all facilities for practices and hosted competitions. At the completion of each practice and/or hosted competition, USER will be responsible for the removal of all debris on deck areas, locker rooms and general facility associated with the event. USER will be responsible for cleaning of locker rooms and restrooms. At no time will any person associated with the USER perform any

maintenance within the boundaries of the Facility without verbal agreement with the Parks and Recreation Director/Deputy Parks and Recreation Director and his/her designee(s) prior to the beginning of the task.

- b. The City, at any time, may cancel, postpone, or delay any practice or competition due to inclement weather or any other factors, which might impair the safety of the participants or cause damage to the facility. The City will contact USER, when possible, in the event of cancellation.
 - c. The City reserves the right to assess a maintenance surcharge to USER, as the City may deem necessary to cover any additional Facility expenses related to meets, practice, and Championship Meets. Championship Meets are defined as the County High School Championship Meet, City High School Championship Meet and the District Championship Meet.
8. Scheduling of Facilities. All scheduling of the facilities will be completed by the Parks and Recreation Director/Deputy Parks and Recreation Director and his/her designee(s). All meet schedules, practices, rescheduling etc. must be approved by the Parks and Recreation Director/ Deputy Parks and Recreation Director and his/her designee(s) before the facility will be reserved. USER will be permitted to utilize facility under existing agreements between the City of Haines City Parks and Recreation Department and the USER at a cost of \$1,000.00 for the practice sessions to be held during the term of this Agreement. Any hosted competitions or meets will require additional fees. A schedule of all requested host competitions for the 2022 season must be submitted no later than 20 calendar days prior to the meet. All requests are to be specific to the names of all participating teams, names of coaches, and contact phone numbers. The Head Coach of the host team will be the on-site contact for City staff, should a problem arise. Season practice schedule requests must be submitted separate from meets in writings no less than 20 calendar days prior to the first scheduled practice. Practices will be scheduled by the Deputy Parks and Recreation Director based upon facility availability. Season extensions for practices due to rainouts or qualification for state championship must be requested by USER immediately upon notification.
9. Law Enforcement in City Facilities. All person entering facility are subject to the policies set forth by the City of Haines City Parks and Recreation Department. The Parks and Recreation Director/ Deputy Parks and Recreation Director and his/her designee(s) are charged with the enforcement of such policies. Uniformed law enforcement officers of the City of Haines City Police Department will be called upon to enforce applicable City Ordinances and Laws. The Parks and Recreation Director/ Deputy Parks and Recreation Director and his/her designee(s) may ban any sports participant or event attendee from

admission or entry to facility for such length of time as the Parks and Recreation Director/ Deputy Parks and Recreation Director may deem necessary in order to prevent or punish indecorous or improprieties of behavior by such participants or attendees.

10. Safety Requirements. USER will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to all persons and property in the Facility. USER will comply with all applicable safety laws, ordinances, rules, regulations, standards, and lawful orders of any public authority bearing on the safety of persons or property, and protection of such from damage, injury, or loss. USER will act with diligence to prevent threatened damaged, injury, or loss in an emergency affecting the safety of persons or property.
11. Public Parking Enforcement. Safety is the number one concern for the Parks and Recreation Department and Parking Violations will be strictly enforced in accordance with the applicable provisions of the City of Haines City Code and Section 316.1945, Florida Statutes, (Stopping, standing or parking prohibited in specific places (fire lanes, designated no parking locations, parking spaces for persons with disabilities, etc.).
12. Equal Opportunity Employment. USER agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, and national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.
13. Laws and Regulations. It is further understood by the parties that USER will, in carrying out the duties and responsibilities under this Agreement, abide by all federal, state, and local laws.
14. Governing Law and Venue. This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Polk County, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

15. Attorney's Fees. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
16. Assignment. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by USER, under any circumstances, without the prior written consent of City.
17. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.
18. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.
19. Public Records Compliance.

USER understands that the public shall have access, at all reasonable times, to documents and information pertaining to the City, subject to the provisions of Florida Statutes Chapter 119; and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. USER's failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. USER agrees to retain all public records in accordance with the City's records retention and disposal policies per the State of Florida Administrative Code Rule; 1B-24.003 and Florida Statutes 119.021(2)(a).

20. Notices. Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

21. Background Screening.

In accordance with the CITY's policies set forth in Resolution No. 17-1240 (City of Haines City Volunteer Sports Program Background Screening Policy) and in Resolution No. 17-1241 (City of Haines City Community Organization Volunteer and Instructor Background Screening Policy), copies of which are attached as Exhibit A, the USER shall (i) secure certified and trained officials, staff, and volunteers that have successfully passed a minimum of a State of Florida (FDLE) background screening, and (ii) secure youth athletic coaches that have successfully complied with all background screening requirements specified by Section 943.0438, Florida Statutes. The USER shall (i) provide the CITY Contract Coordinator with written confirmation of the information necessary for the CITY to conduct the background screenings, or (ii) provide the CITY Contract Coordinator with written confirmation that the USER has previously conducted the background screenings, by July, 31, 2022. In the event that the USER fails to timely provide such written confirmation to the CITY's Contract Coordinator, this Agreement may be immediately terminated.

22. Public Records and ADA Requirements

The VENDOR shall allow public access to all documents, papers, letters, or other material subject to the provisions of Fla. Stat. § 119, and made or received by the VENDOR in conjunction with this Agreement. Failure by the VENDOR to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the CITY.

The VENDOR shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, including, but not limited to, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, ("ADA"), and shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement. Failure by the VENDOR to comply with applicable ADA requirements shall be grounds for immediate unilateral cancellation of this Agreement by the CITY.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this _____ day of _____, 2022.

CITY OF HAINES CITY a Municipal Corporation of the State of Florida.

Anne Huffman, Mayor

ATTEST:

Erica Sanchez, Interim City Clerk

ENDORSED AS TO FORM AND SUFFICIENCY:

Fred Reilly, City Attorney

POLK COUNTY PUBLIC SCHOOLS – Davenport High School

By: _____

Print Name: _____

Title: _____

WITNESSES:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 202__.

Signature: _____

Notary Public - State of Florida

(Notary Seal)

Printed Name: _____

Commission No. _____

Commission Expires: _____