

AGREEMENT

THE SCHOOL BOARD OF SANTA ROSA COUNTY (hereinafter "School Board" or "Board") and THE CITY OF MILTON (hereinafter "City"), enter into this Agreement this _____ day of _____, 2012 and say:

1) **School Board's Right to Use.**

This agreement outlines the general parameters of a broad and far-reaching cooperative initiative between the City and the School Board. This includes, but is not limited to the use of facilities; cooperative wellness programs for students and employees; and efforts to improve the quality of education in Santa Rosa County.

Although this document outlines specifics of tennis court facility use hereinafter "the facility" at the Milton Community Center both parties may continue to expand the scope of their agreement to other activities and locations throughout the county.

2) **Consideration for the Right to Use.**

The consideration to be paid by the School Board shall be \$109,000.00 Dollars, payable in an initial amount of \$50,000.00 Dollars in the fiscal year 2012. The first payment of \$50,000.00 will be made prior to the School Board's first use of the facility under this Agreement. The remaining \$59,000.00 will be paid, pending annual board approval, in equal yearly increments of \$14,750.00 annually for four (4) years. The consideration set forth in this paragraph shall not, however, represent an indebtedness of the School Board but shall, rather, represent compensation to be paid to the City for the School Board's use of the facility, in accordance with this agreement, and is further subject to the annual budgeting of said use fee by the School Board. If the school Board terminates payment under this plan their access to the facilities will be prorated to the percentage of the funds paid.

3) **Miscellaneous Provisions and Definitions.**

- a) The use of the facility shall include the areas adjacent to the facility, and the reasonable means of ingress and egress to the facility.
- b) "Normal Operating Hours" means from 8 a.m. through 8 p.m.
- c) "Scheduled" means the Superintendent or his designee giving a minimum of three (3) months notice as provided in Paragraph 7.

4) **Charges for Facilities Subject to the Right to Use.**

- a) The City will allocate and grant reserved use of the facility, for a maximum of 4 hours of use per day (4:00 P.M. to 8:00 P.M) Monday through Friday, from 1 January to 30 April, for intramural and tennis team practices and matches. Additional time can be scheduled a minimum of three (3) months in advance. The exact schedule must be mutually agreed upon in order to avoid peak usage times. For the above described activities that are scheduled less than three (3) months in advance, the City will cooperate in making the facility available, if not previously reserved; and if previously reserved the City will cooperate in reserving the facility at a mutually agreeable time. All other School Board approved educational or athletic activities shall take place outside of normal operating hours or low use times.

b) The School Board shall staff, at their expense, the facility in accordance with all Federal, State and local laws, rules, policies and ordinances at all times that the School Board has scheduled use during normal operating hours and outside of normal operating hours.

c) During normal operating hours, the City shall be responsible for the adequacy of the facility, and all conditions of the premises and shall pay all costs associated with the routine maintenance of the facility.

5) **Condition of the Facility.**

It shall be the City's responsibility to insure that the Facility and all associated and related equipment are fit for the intended purpose under current standards of organized School Board approved educational or athletic activities. The premises shall be kept in a good and serviceable condition in accordance with reasonable industry standards. The City shall be responsible for maintaining the facility in accordance with federal, state and local standards.

6) **Hold Harmless and Indemnification.**

a) **Obligation of the City:** The City agrees to hold harmless and indemnify the School Board, without waiver of the limits of sovereign immunity in Section 768.28, Florida Statutes, as may be amended from time to time, from and against any and all losses, damages, liabilities, causes of action, and/or any other matters which arise during, occur as a result of, or are related in any manner to any negligent act of omission, reckless or grossly negligent act of omission, or intentional act or omission by the City or any of its agents or employees where such is related to or arises from in any manner, the design, construction, operation, maintenance or treatment of any aspect of the FAC.

b) **Obligation of the School Board:** The School Board agrees to be solely responsible and liable, without waiver of the limits of sovereign immunity as specified in Section 768.28, Florida Statutes, as it may be amended from time to time, for any and all losses, damages, liabilities, causes of actions and/or any other matters which arise during, occur as a result of, or are directly related in any manner to any negligent act or omission, reckless or grossly negligent act or omission, or intentional act or omission by the School Board or any of its agents or employees.

7) **School Board Use Rights.**

Any organized, School Board approved, education and athletic activity is covered so long as the Superintendent of the School District, or designee, shall submit notification in writing, to the City Manager of the City or his/her designee. A notice shall be required as a condition of use by the School Board. The Superintendent or designee shall maintain a master list of all organized School Board approved educational and athletic activities at the Facility. The City shall do the same. If less than three (3) months notice is given, the City will cooperate and try to reserve time as close to the requested for use of the facility as reasonably possible in consideration of the other activities occurring in the facility.

8) **Term of the Agreement.**

This Agreement shall be for the term of ten (10) years. At the conclusion of the term of the Agreement, the parties will negotiate in good faith towards a renewal agreement for the right to use by the School Board.

9) **Notice and Opportunity to Cure.**

Upon breach of this Agreement, the party not in breach shall serve written notice to the party in breach and demand that the breach be cured within thirty (30) calendar days from the date of notice. The party in breach may then cure within such notification period. If the default is not cured, then the Agreement may be canceled in which event the non-defaulting party shall have all remedies available at law or in equity.

10) **Dispute Resolution.**

The resolution of any dispute, which is not cured within the applicable cure period, as that may be extended by agreement by the parties, shall be in a court of appropriate jurisdiction in Santa Rosa County, Florida. Each party shall bear its own attorney's fees and costs in the event of litigation. The parties are encouraged to submit a dispute to non-binding mediation prior to litigation, although such shall not be a condition precedent to filing an action.

11) **Notice.**

Notice to the School Board shall be to the Superintendent or his designee. Notice to the City shall be to the City Manager.

12) **Construction of the Agreement.**

This agreement shall be deemed written by both parties, and both parties were represented by counsel during the course of these negotiations and the preparation of the Agreement. Accordingly, the Agreement shall not be constructed for or against a particular party on the basis that was drafted by a particular party. Additionally, the definitions contained in paragraph 4 or in other parts of this Agreement are binding on the parties in the construction of the Agreement. Sections of the Agreement are referred to herein as "paragraphs", and the heading of the paragraphs, which are underlined, are intended to assist in the organization of the Agreement and shall not be relied upon nor referred to in constructing the meaning of the Agreement.

Where appropriate in the context, the singular shall mean the plural and vice versa and the reference to the male gender shall also mean the female gender.

13) **Recordability and Assignment.**

This Agreement may not be assigned by either party without the express written consent of the other. In the event the City sells or otherwise transfers possession, operation or ownership of the facility to another entity, the School Board's right of use hereunder shall run with the land and shall be binding upon such transfer.

14) **Authority to Enter this Agreement.**

The parties acknowledge and certify that each has the authority to enter this Agreement and the same is binding upon the respective parties.

15) **Agreement Subject to Amendments.**

This Agreement is subject to annual School Board approval, as it may be amended from time to time.

16) **School Board to Return Facility in Good Order.**

School Board will return the facility in good order, after each scheduled use, normal wear, tear and depreciation excepted.

17) **Rebate if Facility is Closed.**

If the facility is closed or unusable for more than six (6) consecutive months, then the School Board will receive back the funds it has expended, pro-rated, for the balance of the term of this Agreement, commencing from the date of the closure of the facility.

DONE AND ENTERED this _____ day of _____ 2012.

SCHOOL BOARD OF SANTA ROSA COUNTY

Witness

Chairman

Witness

Attest,
Superintendent of Schools

CITY OF MILTON

Witness

City Manager

Witness

Attest,
City Clerk