
**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Interlocal Agreement for Joint Funding and Use of the Lake Mary High School Swimming Pool

DEPARTMENT: County Manager Office

DIVISION:

AUTHORIZED BY: Cindy Coto

CONTACT: Don Fisher

EXT: 7212

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the attached School Facility Joint Funding and Use Interlocal Agreement prepared by Seminole County; or,

Approve and authorize the Chairman to execute the attached School Facility Joint Funding and Use Interlocal Agreement prepared by the School Board; or,

Direct staff to renegotiate the School Facility Joint Funding and Use Interlocal Agreement with the School Board and the City of Lake Mary.

District 2 Michael McLean

Don Fisher

BACKGROUND:

As a result of Board direction given during the June 12, 2007 meeting, staff revised the attached Joint Funding and Use Interlocal Agreement by incorporating the following changes:

- Requirement that the SCHOOL BOARD collect an appropriate facility use fee from the third-party operator or sub-contractor for any time period by which it has a reserved or exclusive use of either pool or part thereof.
- Provides for a schedule for non-school board time that uses unambiguous terminology of "Pub Use" or "3rd Party" use, so that any one can clearly understand which time slots are available for unfettered public use. The goal being consistency in terminology between this agreement and the terminology used in the schedule.
- Prohibits the 3rd party operator from obstructing or impeding use of the pools by members of the public during designated public use times. It further affirmatively obligates the operator to use its supervisory authority to prevent any others persons (such as group members) from intimidating members of the public from using the pools during public use times. Notwithstanding that, authorizes the operator to control the behavior of the public when using the pool, up to and including the right to close the pool if necessary on any given day.
- Provides for the LOCAL GOVERNMENTS to adopt the schedule of fees or charges to be paid by the general public to access the pools.
- Provides that this agreement shall be canceled, unless modified by all parties, if no design-build proposal is received that can complete the "basic two pool design" within

the Project Budget of \$1,900,000.

- Provides that the County's contribution is to be limited to design and construction expenses for the pools and those ancillary facilities that are required by regulation for public pools. Requires that proposals must separately specify the cost for such a basic two pool design so the COUNTY can determine the cost for that item.
- Provides that the 99-year lease will automatically terminate if no basic two pool design is received within the Project Budget.
- Provides a reverter clause (back to the County) if the School Board ever ceases to use the Pool Site for a pool facility.
- Includes a provision that any modifications to the facility by the SCHOOL BOARD are subject to any covenants of record to the contrary.
- Requires the 3rd-party operator to remit all fees collected from the general public to the SCHOOL BOARD.
- Requires the SCHOOL BOARD to designate a number of parking spaces that will be available for public use for the FACILITY.
- Provides the right of the COUNTY, upon 12-months advance notice, to "reserve" the FACILITY for "regional swimming events."
- Affords the BCC the right to prohibit any third party or sub-contractor agreement (all of which must be provided to the BCC before their approval, for BCC review), when not in the public interest (which would include any such contract, the provisions of which were inconsistent with any of the provisions of this agreement).

The agreement was scheduled for consideration by the Board at its June 26, 2007 meeting; however, the item was pulled from the agenda to provide the School Board an opportunity to address concerns it had with the agreement. The School Board's concerns are summarized in the attached letter. They have also provided a revised agreement that they find acceptable.

STAFF RECOMMENDATION:

Staff is seeking direction of whether to process the School Facility Joint Funding and Use Interlocal Agreement prepared by Seminole County, the School Board, or to renegotiate the terms of the funding agreement.

ATTACHMENTS:

1. School Facility Joint Funding and Use Agreement (6/15/07 Revised Draft)
2. Pool Use Schedule
3. Agreement

Additionally Reviewed By: <input checked="" type="checkbox"/> County Attorney Review (Matthew Minter)

SCHOOL FACILITY JOINT FUNDING AND USE AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____, 2007, by and between THE SCHOOL BOARD OF SEMINOLE COUNTY, FLORIDA, a body corporate, whose principal address is 400 East Lake Mary Boulevard, Sanford, Seminole County, Florida 32773, hereinafter referred to as "SCHOOL BOARD", the CITY OF LAKE MARY, FLORIDA, a Florida municipal corporation, whose principal address is 100 North Country Club Road, Lake Mary, Florida, 32795, hereinafter referred to individually as "CITY", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida, 32771, hereinafter referred to as "COUNTY." Collectively, the CITY and the COUNTY shall hereinafter be referred to as the "LOCAL GOVERNMENTS."

RECITALS:

1. The SCHOOL BOARD desires to develop a swimming pool facility to serve Lake Mary High School that would satisfy specifications for competitive swimming events for the high school swimming and water polo teams; and
2. The LOCAL GOVERNMENTS and the SCHOOL BOARD recognize that there are few significant swimming facilities available for use by the general public in and around the City of Lake Mary; and
3. The LOCAL GOVERNMENTS and the SCHOOL BOARD recognize that a high quality pool facility represents a significant capital outlay. The parties therefore desire to combine their resources in order to develop a joint use pool facility to serve the needs of both the school and the general public; and
4. The LOCAL GOVERNMENTS' financial participation in this pool facility shall be limited to contribution of the up-front capital for the design and construction of the facility, and, in the case of the COUNTY, leasing a site for the project to the SCHOOL BOARD; and
5. The SCHOOL BOARD shall have the ultimate responsibility of the "owner" of the facility during the term of this agreement, including responsibility for safety, security, operation, maintenance, and supervision as provided for herein. Notwithstanding that, the SCHOOL BOARD may provide by separate contract for the operation of the pool facility during non-school hours by a third party operator, as specified herein; and

6. The SCHOOL BOARD will enter a separate agreement with a qualified third-party operator, which agreement will be consistent with the requirements and directives of this agreement.

7. Public access to and use of the pool facility during non-school hours will be guaranteed by means of a schedule ("Non-School Schedule") designating "Public Use" time periods for both pools, which schedule must be observed by any third-party operator. Such schedule shall be established by the LOCAL GOVERNMENTS. The general public shall have the reasonable right of ingress and egress from the FACILITY during non-school time in a manner consistent with the terms of this Agreement.

8. The LOCAL GOVERNMENTS shall control the fees to be charged to the general public, by means of a Schedule of Public Use Fees, which shall be adopted, and may be amended by Resolution of the LOCAL GOVERNMENTS from time to time.

9. The third-party operator may be permitted to have "reserved" or "dedicated use" of the pools during times not designated as "Public Use" on the Non-School Schedule. The SCHOOL BOARD shall collect an appropriate facility use fee from any person or entity, including the third party operator or sub-contractor thereof, for any such reserved or dedicated use, which shall be specifically provided for in any agreement between the SCHOOL BOARD and the third-party operator. The third party operator may pass such facility use fee through to any sub-contractor, but such fee shall not be waived by the SCHOOL BOARD. The third-party operator may set and charge specific fees for groups and programs during these dedicated "3rd Party Use" periods which are independent of the Schedule of Public Use Fees.

10. The parties recognize that the overall viability of this pool project may be contingent upon whether the two contemplated pools can be designed and constructed within the hereinafter stated budget limits. Therefore, the parties desire to have the option of cancelling this agreement without further obligation in the event that no qualified and acceptable proposal satisfies that requirement.

NOW, THEREFORE, pursuant to the authority of *Section 163.01, et. Seq., and Section 1013.10*, Fla. Stat. (2006) and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the SCHOOL BOARD, COUNTY, and CITY mutually covenant and agree as follows:

11. The foregoing Recitals are true and correct and are hereby incorporated in this Agreement.

12. LAND: Subject to the provision for cancellation of this Agreement set out in § 13e., below, the COUNTY, by separate agreement, shall enter into a ninety-nine (99) year ground lease with the SCHOOL

BOARD for a parcel of no less than 2.5 acres of land, as described in Exhibit "A", hereinafter referred to as the "Pool Site" whereupon the SCHOOL BOARD shall construct a swimming pool facility and educational recreational complex, hereinafter referred to as the "FACILITY." Such lease shall also include a provision for reverter of the Pool Site to the COUNTY in the event that the SCHOOL BOARD ceases to use the Pool Site for swimming pool facility purposes.

13. IMPROVEMENTS: The SCHOOL BOARD will, at its expense, solicit design-build proposals for the construction on the PROPERTY, within the combined budget (contributions) provided for herein, the FACILITY including the following improvements:

- a. A fifty (50) meter x seventy-five (75) feet (4' to 12' in depth) swimming pool built according to standards of the United States Swimming Association including both two one (1) meter and two three (3) meter competition diving boards, for competitive events in accordance with standards adopted by the Florida State High School Activities Association for high school swimming meets (hereinafter, "competitive pool"), and a twenty-five (25) yard x twelve (12) yard swimming pool (hereinafter, "small pool"). The FACILITY shall also include structures and facilities for dressing and restrooms, concessions, offices, equipment storage, pool equipment and systems, spectator seating, hardscape, and storm water collection / retention that is in excess of any available capacity in the existing adjacent pond on Lake Mary High School property. The FACILITY, including swimming pools, shall be designed and constructed by qualified Florida licensed professionals employed by the SCHOOL BOARD in such manner as to provide a life-expectancy for the FACILITY of a minimum of forty (40) years. Such request for proposals must require responders to separately specify the cost for the design and construction of the two pools and those ancillary facilities that are specifically required by applicable codes or regulations necessary to operate those two pools as a public pool facility (hereinafter, "basic two pool design").
- b. The FACILITY shall be constructed in accordance with Chapter 514, Fla. Stat. (2006), Chapter 64E-9, F.A.C., and Section 424 of the Florida Building Code.
- c. The SCHOOL BOARD agrees to designate and maintain, during the term of this agreement, a minimum of ____ parking spaces within adjacent existing parking areas associated with Lake Mary High School to be utilized as parking for the FACILITY and made available to the general public during hours of operation when the FACILITY is open to the general public.

- d. The SCHOOL BOARD has estimated the cost to design and construct the FACILITY to be the sum of One Million Nine Hundred Thousand (\$1,900,000) Dollars ("Project Budget"). The parties agree to jointly participate in the funding of such design and construction as follows:
- (1) COUNTY: The maximum sum of \$1,200,000. COUNTY funds are to be used only for site design, site construction, pool design, pool construction, and associated pool and site related expenses and those auxiliary facilities required by applicable law or rule. In the event that the selected proposal specifies that these items may be designed and constructed for less than that amount, then the COUNTY'S contribution shall be limited to such amount.
 - (2) CITY: The maximum sum of \$300,000.
 - (3) SCHOOL BOARD: \$400,000, the amount of which will be provided by the Lake Mary High School Athletic Boosters, Inc.
- e. In the event that no qualifying proposal is received providing for the development of the basic two pool design (as specified in §13 a., above) within the Project Budget, the project shall not proceed, and, absent agreement of all parties for the amendment of this Agreement, evidenced in writing and executed by all parties hereto, this Agreement shall be cancelled without liability upon notification to the SCHOOL BOARD by the COUNTY. In such case, the COUNTY'S ground lease for the Pool Site shall automatically cancel (as specified in §12,above).
- f. Subject to the condition that a qualifying proposal is received by the SCHOOL BOARD, and that a design build contract will be awarded that provides for the design and construction of the basic two pool design within the Project Budget, the SCHOOL BOARD shall have sole discretion to modify the project scope set forth in §11.a in order to ensure the total project does not exceed the \$1,900,000 Project Budget. The School Board may in its discretion choose to unilaterally fund any project items by which the actual cost of design and construction of such items would cause the Project Budget to exceed the \$1,900,000 Project Budget.
- g. The CITY agrees to pay to the SCHOOL BOARD not to exceed \$300,000, based on its proportionate share of quarterly invoices certified by SCHOOL BOARD as completed work, in accordance with the shares of the entire estimated cost set

forth in subsection 2.d., above. CITY shall reimburse the SCHOOL BOARD the amount certified and requested in each invoice within 30 calendar days of receipt of the invoice. The CITY represents that \$300,000 in funds have been appropriated and encumbered for this purpose. The SCHOOL BOARD also reserves the right to unilaterally expand the scope of the project at its expense.

- h. The COUNTY agrees to pay to the SCHOOL BOARD not to exceed \$1,200,000, based on its proportionate share of quarterly invoices certified by SCHOOL BOARD as completed work of the pool-related design and construction work as specified in d(1), above, in accordance with the shares of the entire estimated cost set forth in subsection 2.d., above. COUNTY shall reimburse the SCHOOL BOARD the amount certified and requested in each invoice within 30 calendar days of receipt of the invoice. The COUNTY represents that \$1,200,000 in funds have been appropriated and encumbered for this purpose.

14. PROSECUTION AND MANAGEMENT OF PROJECT:

- a. The SCHOOL BOARD shall be solely responsible for managing and overseeing the project design and construction.
- b. The SCHOOL BOARD shall be solely responsible for pre-design costs for the project. No other work or expense shall be incurred by the SCHOOL BOARD until all parties execute this agreement.
- c. All disbursements by the SCHOOL BOARD in planning, design and construction of the FACILITY shall be fully documented and available, upon request, for public inspection or audit in accordance with *Chapter 119*, Florida Statutes (2006).

15. ALLOCATION OF USE OF FACILITY: Use of the FACILITY shall be allocated according to "school use" time and "non-school use" time. The non-school use time shall expressly designate the times when the competition pool and the small pool are open and available for use by the general public.

- a. School Use - The Principal of Lake Mary High School shall annually publish, before the commencement of a new school year, a schedule of "school use" time, which schedule shall reflect not only scheduled school days, but also break or holiday periods when the pool facility is in use for school sanctioned practices or competitive events. Use of the FACILITY during school use time is completely at the discretion of the Principal of Lake Mary High School, and the FACILITY will not be open to the public during that time.

- b. Non-School Use - A Non-School Use Schedule shall be adopted by the LOCAL GOVERNMENTS, and may be revised from time to time by Resolution. The Non-School Schedule shall expressly designate times when each pool is open and available for "public use" by the general public for recreational activity on weekdays before and after school hours, weekends, during summer recess, and scheduled holidays. The Initial Non-School Schedule is attached hereto as **Exhibit "B."** The third-party operator shall neither take any action to prohibit or impede use of either pool by the general public during public use time, nor take or permit any action that would create the appearance that either pool is not available to be used by the general public during public use time. Further, as part of his supervisory responsibilities, the third-party operator shall ensure that no other third party individual or group impedes or in any fashion intimidates the general public from full use of the two pools during all times when they are designated for public use. The foregoing provision is not intended, and shall not prevent the third party operator from exercising control over the conduct of members of the public during public use times at the pool facility, as more specifically described in §16c., below. The Non-School Schedule shall also designate times when one or both of the two pools, or lanes or designated areas thereof, are dedicated for club or program use. During such time periods shown on the schedule as club or program use for either pool, the third party operator shall have complete discretion to limit and specify the users of such pool during those periods. With appropriate parental/legal guardian supervision, the age of pool users shall not be a consideration. The third-party operator shall be responsible to ensure that the schedule for public use during non-school time shall be kept conspicuously posted at the FACILITY entrance for the benefit of the public. Subject to the condition that the COUNTY may designate on a Non-School Use Schedule delivered to the third-party operator at least twelve (12) months in advance, the COUNTY may reserve the right to designate and reserve the use of the entire FACILITY for up to three periods per year, for up to _____ consecutive days, for regional swimming events.

16. OPERATION, MAINTENANCE, AND SUPERVISION: The SCHOOL BOARD shall be ultimately responsible for the control, operation, maintenance, repair, security, safety and supervision and risk management of the FACILITY, both directly during school use time, and indirectly through the third-party operator in accordance with the terms of its agreement with the third-party operator. Neither CITY nor the COUNTY shall have any responsibility in law or fact for the control, operation,

maintenance, repair, and supervision of the FACILITY. The SCHOOL BOARD shall, at its cost and expense, perform all necessary functions relating to the FACILITY, including but not limited to the following:

- a. Operate, repair and maintain the FACILITY through the term of this Agreement. The SCHOOL BOARD shall perform grounds keeping, grass maintenance, shrubbery, building and fencing maintenance in accordance with its normal grounds and facility maintenance schedules and level of service for Lake Mary High School.
- b. The SCHOOL BOARD shall be ultimately responsible to ensure that an adequate number of trained and certified lifeguards are on duty and policing the users of the two swimming pools at all times that the pools are open to the public, whether for school or for use by the COMMUNITY. The SCHOOL BOARD shall further ensure that the FACILITY is operated and maintained in accordance with *Chap. 514, Fla. Stat. (2006)* and *Chap. 64E-9, F.A.C.*
- c. Neither the SCHOOL BOARD, any third party operator or sub-contract operator shall permit any guest, invitee, employee, agent, or other user to engage in any disorderly conduct or to commit or maintain any waste or nuisance at the FACILITY. Further, neither the SCHOOL BOARD nor any third party operator shall permit any guest, invitee, or employee, agent or other user to engage in any gambling, sale or use of alcoholic beverages or any act or action which violates the laws of the State of Florida or of the United States. Pursuant to this authority and responsibility, the third party operator shall have the authority and right to close the pool facility on any day if necessary, as a means of preventing such misconduct by any individual or group of pool facility users.
- d. Safely store and maintain all chemicals and cleaning or maintenance equipment used in the performance of its responsibilities herewith and shall keep and maintain in good working order all pumps, filters, pool water heaters, and other mechanical systems used in connection with the operation of the swimming pools to be constructed on the PROPERTY. The SCHOOL BOARD shall daily test and use appropriate chemicals for the control of bacteria and algae in the swimming pool and other improvements. The SCHOOL BOARD shall repair cracks in the pool and deck surfaces, as well as on fixtures in and around the swimming pool and deck.
- e. Keep, maintain and re-lamp all lights, lighting and electrical lines and equipment in the pool, bathhouse and pool deck and ensure that all equipment, buildings, and

ancillary structures are in a safe operating condition. The SCHOOL BOARD shall be responsible for maintaining and re-lamping parking area light fixtures.

- f. Make frequent visual inspections to assure the safety of the diving boards and to prevent failure due to cracking or loosening of fastening devices.
- g. Obtain and maintain in effect, during the term of this Agreement, all necessary regulatory operating permits per Chapter 64E-9, F.A.C.

17. USE FEES FOR NON-SCHOOL TIME. The LOCAL GOVERNMENTS shall adopt, and revise from time to time by Resolution, a schedule of fees to be charged to the general public for use of FACILITY. The initial "Schedule of Public Use Fees" is set forth in Exhibit "C" attached hereto and incorporated herein by reference. All public use fees collected by the third-party operator or sub-contractor shall be accounted for and remitted to the SCHOOL BOARD on a (daily / weekly) basis. The third-party operator shall direct any individual desiring to pay by check for an annual pass to make the check payable to the "School Board of Seminole County." The third-party operator shall be permitted to charge clubs and programs separate fees for dedicated or reserved use of the two pools during times not scheduled for public use. The third-party operator shall maintain separate accounts and shall not co-mingle public use fees with fees received for groups or program use, or with any other funds of the third-party operator. The third-party operator shall keep accurate records and accounts of all expenses and revenues incurred or received for operation of the FACILITY during non-school time, which records shall be available for audit by any party hereto. The third-party operator shall be required to account for all receipts, specifically identifying the purpose for which revenues were received, and shall maintain such records for a period of three years following the end of each fiscal year.

18. THIRD-PARTY OPERATOR. The SCHOOL BOARD shall be permitted to contract with a third-party operator for the operation of the FACILITY during non-school hours. The third-party operator shall be responsible to ensure that whenever the FACILITY is open for non-school use, the FACILITY is managed by appropriately experienced, qualified and certified personnel who shall physically on-site during all such time periods. Such contract may provide for the execution of any of the SCHOOL BOARD'S duties with respect to the FACILITY, including, but not limited to those specified in § 14, above, by such third-party operator. Notwithstanding such contract, the SCHOOL BOARD cannot delegate its ultimate responsibility and liability for the proper performance of such duties. The third-party operator shall be required to observe all of the terms of this Agreement (which must be incorporated by reference in any contract between the SCHOOL BOARD and the Third-party operator), including the following:

- a. The third-party operator shall safeguard and insure access and use of the pools by the general public during all "public use" times designated on the Non-School Time Schedule. The third-party operator shall be permitted "dedicated or exclusive use" of the pools during times not designated on the Non-School Time Schedule as "Public Use" time, provided the agreement between the the SCHOOL BOARD and the third-party operator includes provision for collection by the SCHOOL BOARD of an appropriate facility use fee or charge for such period of reserved or exclusive use, which fee may not be waived by the SCHOOL BOARD.
- b. The third party shall be subject to *Ch. 119* and *Ch. 286*, Florida Statutes to the extent required by law.
- c. The third party operator shall properly keep and maintain all financial and other records relating to the operation of the FACILITY separate and apart from all other records of the third party and shall be subject to an annual audit as directed by the SCHOOL BOARD to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the Commissioner of Education. The annual audit report shall be submitted within 75 days after the fiscal year's end to the SCHOOL BOARD. Further, any sub-contractor under any third-party operator shall be subject to the terms of this provision.
- d. Any sub-contractor under any third-party operator shall be subject to the approval of the SCHOOL BOARD, and must likewise comply with the terms of this agreement. Any agreement between the SCHOOL BOARD and any third-party operator, and any agreement between any third-party operator and any sub-contractor must include an express provision for termination of such agreement without liability in the event of failure to comply with the terms of this agreement. Such agreements may provide for a limited period to cure any default or correct any non-compliance, but shall not permit multiple or continuing violations of the terms of this agreement or the non-school time schedule.
- e. As of the time of the execution of this Agreement, the COUNTY has been advised that no third party agreements have yet been negotiated and therefore are not available for inspection. Even though the LOCAL GOVERNMENTS shall not be a party to any third-party agreement or any sub-contract related to the operation and management of the FACILITY during non-school hours, no such agreement or amendment thereto may be executed by the SCHOOL BOARD or any party until the LOCAL GOVERNMENTS have first been provided a copy

for examination and approval at least three weeks before such execution. The LOCAL GOVERNMENTS reserve the right to prohibit any such agreement on the basis that the agreement is not in the public interest. Current copies of any and all such agreements, affording any party the right to operate or manage the FACILITY, including all schedules and exhibits related thereto, and any subsequent amendments related thereto, shall be provided to the LOCAL GOVERNMENTS. No party to this Agreement, nor any third party or sub-contractor, shall engage in any act or effort to avoid or circumvent this requirement. Any such act will be the basis for permanently barring such party from any future contracts related to the FACILITY.

19. CONCESSION SALES: THE SCHOOL BOARD reserves for itself the exclusive right and privilege for any third-party operator, school-related club or school service organization to sell food, beverages and other concessions at the FACILITY at all times. The sale and use of alcoholic beverages at the FACILITY or on the PROPERTY shall be prohibited at all times.

20. LIABILITY FOR CLAIMS:

- a. The SCHOOL BOARD shall be responsible for any and all duties imposed upon it by law for the maintenance of the FACILITY in a safe condition and for the supervision of the FACILITY during all hours of operation.
- b. The SCHOOL BOARD shall be responsible for the maintenance of such insurance as it deems adequate and necessary to protect the SCHOOL BOARD from the risk of personal injury **or** loss at the FACILITY, or any contents therein owned by the SCHOOL BOARD by fire, theft, storm, hail, flood, vandalism or other similar losses. The SCHOOL BOARD may require that any contract with the third-party operator, or sub-contractor, require such party to maintain insurance for these purposes, and to list the SCHOOL BOARD as an additional named insured.

21. CONSTRUCTION DOCUMENTS: Upon completion of design development and final construction documents, a set of such documents shall be provided to the COUNTY and CITY. The COUNTY and CITY may make written comments for revisions thereto; however, the SCHOOL BOARD shall have the authority to make the final decision as to any such comments. For purposes of enforcing the provisions of the Florida Building Code, the SCHOOL BOARD is the Authority Having Jurisdiction (AHJ) and shall provide required plans reviews and inspections of all construction.

22. SCHOOL BOARD IMPROVEMENTS: The SCHOOL BOARD shall have the right (but subject to any covenants of record in conflict herewith), at its sole cost and expense, to erect or permit to be erected on the

PROPERTY such improvements or modifications neither interfere with the current or proposed educational or public uses of the FACILITY by the SCHOOL BOARD and the COMMUNITY nor violate properly adopted SCHOOL BOARD policies, or COUNTY or CITY ordinances. Unless otherwise mutually agreed in advance in writing, any such improvements shall be the sole maintenance responsibility of the SCHOOL BOARD.

23. LIENS: Neither the SCHOOL BOARD nor the COMMUNITY shall make any contract or agreement for the construction, alteration, repair or maintenance on the PROPERTY or of any improvement now or hereafter erected unless such contract or agreement is in writing and contains an express waiver by such contractor of any and all claims for mechanic's or materialmen's liens against the PROPERTY or any improvements now or hereafter erected thereon. Notice is hereby given that no contractor, subcontractor, or any other party who may furnish any material, service or labor for any buildings or improvements, alterations or repairs, or maintenance or operation of the FACILITY, at any time shall be or may become entitled to any lien thereon whatsoever. The SCHOOL BOARD, for itself and its assigns, agrees that anyone entitled to the use of the FACILITY under this Agreement who contracts for the building, improvement, alteration, repair or maintenance of the FACILITY or any improvements now or hereafter erected thereon shall give actual notice of this restriction, in advance, to any and all contractors, sub-contractors, or other persons or firms that may furnish any such material, service or labor.

24. UTILITY SERVICE: The SCHOOL BOARD shall initiate, contract for, and obtain in its name all utility services required for use of the PROPERTY and shall pay all charges for these services as they become due.

25. ADDITIONS AND IMPROVEMENTS: All additions, changes, and other improvements erected or placed on the PROPERTY shall remain thereon and shall not be removed therefrom during the term of this agreement, absent mutual agreement of the parties. Upon the expiration or termination of this Agreement, all such improvements shall become property of the COUNTY.

26. NOTICES: All notices, requests, demands, elections, consents, approvals, designations and other communications of any kind shall be in writing and addressed to the parties as follows:

SCHOOL BOARD
Superintendent
Seminole County Public Schools
District Administrative Official
400 East Lake Mary Boulevard
Sanford, Florida 32773

And,

Deputy Superintendent
Seminole County Public Schools
District Administrative Office
400 East Lake Mary Boulevard
Sanford, Florida 32773

CITY OF LAKE MARY
City Manager
City of Lake Mary
100 North Country Club Road
Lake Mary, Florida 32795

SEMINOLE COUNTY
County Manager
1101 East First Street
Sanford, Florida 32771

Any party may change the address to which notices are to be sent by giving ten (10) days prior written notice informing the other parties of the change of address. Service of notice shall be deemed complete upon mailing.

27. REMEDIES AND DISPUTE SETTLEMENT: In recognition that this is an agreement among Florida public entities, the parties acknowledge that the requirements of the Interlocal [Agreement] on Mediation and Intergovernmental Cooperation, which became effective on December 12, 1994 must be observed with respect to any disputes concerning this agreement. The parties further agree that in the event of any breach or default of the terms hereof, the parties are seeking the benefit of their bargain reflected herein. Therefore, the parties agree that the terms of this agreement may be enforced by action for specific performance and/or declaratory judgment if disputes cannot be resolved by non-judicial means, and any party against whom the action or proceeding is brought waives the claim or defense that the complainant party has an adequate remedy at law, or has failed to exhaust administrative remedies. All parties shall bear their own attorney fees and costs related to any dispute settlement or litigation proceedings concerning this Agreement.

28. APPLICABLE LAW: The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement.

29. VENUE: The parties agree that venue for any action arising out of the interpretation, performance or enforcement of the provisions of this Agreement shall be in Seminole County, Florida.

30. WAIVER OF JURY TRIAL: The parties agree that in the event of any action among and between any or all of the parties arising out of the interpretation, performance or enforcement of this Agreement, such action shall be tried to the Court and each expressly waives its right

to jury trial in such circumstance. This provision is applicable to actions involving third-party operators and sub-contractors.

31. ASSIGNMENT: The parties shall not assign this Agreement nor any interest arising herein without the written consent of all parties hereto.

32. WAIVER: No consent or waiver, expressed or implied, by any party to or of any breach of any covenant, condition, or duty of any party hereto shall be construed as a waiver to or of any other breach of the same or any other covenant, condition or duty.

33. DEFAULT: No party shall be deemed in default under this Agreement if such party is delayed in the performance of any of its obligations if the delay is due to natural disasters, acts of God, restrictions, regulations or controls of any independent governmental agency, civil commotion, insurrection, acts of terrorism, sabotage or enemy or hostile governmental actions, fire or other casualty or other similar event or condition beyond the control of the party delayed. In the event of such delay, all dates for performance shall automatically be extended by a period equal to the aggregate period of such delays.

34. HEADINGS: The headings of each section in this Agreement are for convenience only and do not define, limit, or construe the content of such sections.

35. MISCELLANEOUS:

- a. Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of partnership or joint venture.
- b. Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders where the context requires.
- c. The rights and entitlements expressed herein are intended only for the named parties to this agreement. The parties intend that there are no third-party beneficiaries to this Agreement.
- d. This agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

36. SEVERABILITY: If any one or more of the covenants or provisions of this Agreement shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall

be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.

37. TERM: The term of this Agreement shall be concurrent with the design and operational life of the facility as set forth in ¶2.a. of this Agreement or 99 years, whichever is longer, unless otherwise mutually agreed by the parties.

38. COMPLETE AGREEMENT:

- a. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.
- b. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly executed by authorized representatives of the parties.

39. THIS AGREEMENT shall become effective upon approval and execution by the party last signing.

CITY OF LAKE MARY, FLORIDA

ATTEST:

By: _____
Thomas C. Greene, Mayor

Carol A. Foster, City Clerk

Date: _____

THE SCHOOL BOARD OF SEMINOLE
COUNTY, FLORIDA

ATTEST:

By: _____
Barry Gainer, Chairman

Bill Vogel, Secretary

Date: _____

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____

MARYANNE MORSE
Clerk to the Board of
County commissioners of
Seminole County, Florida.

CARLTON D. HENLEY, Chairman

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by
the Board of County Commissioners
at its _____ 2007, regular
meeting.

County Attorney

P:\USERS\MMINTER\SCH-POOL.REV6-13.DOC

Sample Pool Use Schedule				
Community Season				
June 6-August15, December 15-December 31, 2008				
Legend				
A= 1/2 of Competition Pool				
B= 1/2 of Competition Pool				
C= Small Pool				
D= Classroom				
Time	A	B	C	D
5:30 AM	3rd Party	Pub Use		
6:00 AM	3rd Party	Pub Use		
6:30 AM	3rd Party	Pub Use		
7:00 AM	3rd Party	Pub Use		
7:30 AM	Pub Use	Pub Use	3rd Party	
8:00 AM	Pub Use	Pub Use	3rd Party	
8:30 A.M.	Pub Use	Pub Use	3rd Party	
9:00 AM	3rd Party	Pub Use	Pub Use	
9:30 AM	3rd Party	Pub Use	Pub Use	
10:00 AM	3rd Party	Pub Use	Pub Use	
10:30 AM	3rd Party	Pub Use	Pub Use	
11:00 AM	3rd Party	Pub Use	Pub Use	
11:30 A.M.	3rd Party	Pub Use	Pub Use	
12:00 PM	Pub Use	Pub Use	Pub Use	
12:30 PM	Pub Use	Pub Use	Pub Use	
1:00 PM	Pub Use	Pub Use	Pub Use	
1:30 PM	Pub Use	Pub Use	Pub Use	
2:00 PM	Pub Use	Pub Use	Pub Use	
2:30 PM	Pub Use	Pub Use	Pub Use	
3:00 PM	Pub Use	Pub Use	Pub Use	
3:30 PM	Pub Use	Pub Use	Pub Use	
4:00 PM	Pub Use	Pub Use	Pub Use	
4:30 PM	Pub Use	Pub Use	Pub Use	
5:00 PM	Pub Use	3rd Party	3rd Party	
5:30 PM	Pub Use	3rd Party	3rd Party	Red Cross
6:00 PM	Pub Use	3rd Party	3rd Party	Red Cross
6:30 PM	Pub Use	3rd Party	3rd Party	Red Cross
7:00 PM	Pub Use	3rd Party	3rd Party	Red Cross
7:30 PM	Pub Use	3rd Party	3rd Party	Red Cross
8:00 PM	Pub Use	3rd Party	3rd Party	Red Cross
8:30 PM	Pub Use	3rd Party	3rd Party	Red Cross



SEMINOLE COUNTY
PUBLIC SCHOOLS

BILL VOGEL, Ed.D.
Superintendent

Educational Support Center
400 E. Lake Mary Boulevard
Sanford, Florida 32773-7127

Facilities Planning
Department
Phone: 407-320-0071
Fax: 407-320-0292

GEORGE KOSMAC
*Deputy Superintendent of
Operations*
407-320-0330

RECEIVED

AUG 31 2007

SEMINOLE COUNTY
COUNTY MANAGER

August 31, 2007

Ms. Cindy Coto, County Manager
Seminole County Government
1101 East First Street
Sanford, FL 32771

RE: Lake Mary High School Swimming Pool Agreement

Ms. Coto:

Beginning in January, representatives from the County, City of Lake Mary and School Board have been working on an agreement to construct a new, community use swimming facility at Greenwood Park. The City and School Board approved an earlier version of the agreement on May 3, 2007 and May 8, 2007 respectively. Subsequent to the approval by both the City and School Board, the assistant County attorney was directed to develop a revised agreement that substantially changed the terms of the initial agreement developed between the three parties.

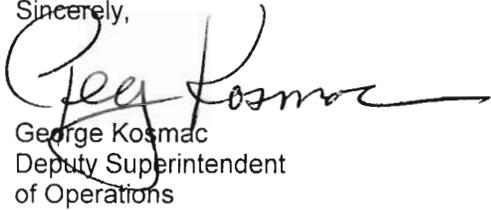
This letter will explain in general terms the reasons why the school board cannot agree to the revised terms of the agreement as drafted by the assistant County attorney. The reasons are as follows:

1. The revisions make the local governmental agencies responsible for determining when the pool(s) will be available for use by the public to the exclusion of the School Board, school principal and any third party operator. This is not feasible since the school board (through the school and third party operator) is responsible for operational expenses of the facility and must have scheduling control to ensure adequate revenue is generated to cover these costs.
2. The revisions put the local governmental agencies in control over the fees that may be charged for public use of the pool and yet the School Board (or a third party such as the Boosters) remains responsible for operating and expenses incurred in running the pool. Similar to item 1 above, this revision will have the effect of denying the Boosters a stream of revenue to pay loans incurred in financing the construction of the facility and adequately covering the operating expenses.
3. The revisions allow the parties to have the option of canceling the agreement without obligation in the event that no qualified and acceptable proposal is received which ensures the construction of two pools. This provision is very restrictive in that if two pools cannot be built with the fixed allocated dollars, then it may be necessary to consider constructing only one pool.
4. The revisions control the allocation of use between the school, Boosters (third-party operator) and the public. It puts the local governments in control of the allocation times with potential delays in getting that allocation revised. Other than school use, neither the Board nor the Boosters may do any more than present a recommended schedule. This not only affects potential revenue to adequately cover operational and financing expenses, but may adversely impact school extracurricular activity use of the facility.

5. The revisions put the local governments in direct control of the revenue that can be generated by pool use by the public. Again, this type of provision effectively limits the revenue that can be generated by the Boosters in fulfilling their financial obligations.
6. The revisions put the local governments in control over who will run the pool at the exclusion of the School Board. This is not feasible since it is the school board and school that has ultimate responsibility and accountability for the operation of the facility.

We believe the original agreement that was approved by City and School Board, including minor revisions as delineated in BCC Chairman Henley's memorandum dated May 21, 2007 and as agreed to by Lake Mary High School principal Mr. Boyd Karns, to be a fair and reasonable document considering each parties initial and long term responsibilities, and to be in the best interest of the community for which we all serve.

Sincerely,



George Kosmac
Deputy Superintendent
of Operations

cc: Board Members
Dr. Bill Vogel, Superintendent
Boyd Karns, Principal of LMHS

SCHOOL FACILITY JOINT FUNDING AND USE INTERLOCAL AGREEMENT

THIS AGREEMENT made and entered into on May 8, 2007, in triplicate original, by and between THE SCHOOL BOARD OF SEMINOLE COUNTY, FLORIDA, a body corporate, whose principal address is 400 East Lake Mary Boulevard, Sanford, Seminole County, Florida 32773, hereinafter referred to as "SCHOOL BOARD" and the CITY OF LAKE MARY, FLORIDA, a Florida municipal corporation, whose principal address is 100 North Country Club Road, Lake, Mary, Florida 32795, hereinafter referred to individually as "CITY", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter individually referred to as "COUNTY." Collectively, the CITY and the COUNTY, for the benefit of the public, shall hereinafter be referred to as the "COMMUNITY."

WITNESSETH:

That pursuant to the authority of *Section 163.01, et. seq., and Section 1013.10*, Fla. Stat. (2006) and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the SCHOOL BOARD, COUNTY, and CITY mutually covenant and agree as follows:

1. LAND: The COUNTY, by separate agreement, shall enter into a ninety-nine (99) year ground lease with the SCHOOL BOARD for a parcel of no less than 2.5 acres of land, as described in Exhibit "A", hereinafter referred to as the "PROPERTY" whereupon the SCHOOL BOARD shall construct a swimming pool facility and educational recreational complex, hereinafter referred to as the "FACILITY."
2. IMPROVEMENTS: THE SCHOOL BOARD shall cause to be constructed or erected on the PROPERTY the following improvements:
 - a. A fifty (50) meter x. seventy-five (75) meter (4' to 12' in depth) swimming pool built according to standards of the United States Swimming Association including both two one (1) meter and two three (3) meter competition diving boards, for competitive events in accordance with standards adopted by the Florida State High School Activities Association for high school swimming meets, and a twenty-five (25) yard x. twelve (12) yard swimming pool, of which the FACILITY, including swimming pools, shall be designed and constructed by qualified Florida licensed professionals employed by the SCHOOL BOARD in such manner as to provide a life-expectancy for the FACILITY of a minimum of forty (40) years. The FACILITY shall also include structures and facilities for dressing and restrooms, concessions, offices, equipment storage, pool equipment and systems, spectator seating, hardscape, and storm water collection/ retention that is in excess of any available capacity in the existing adjacent pond on school property.

- b. The FACILITY shall be constructed in accordance with Chapter 514, Fla. Stat. (2006), Chapter 64E-9, F.A.C., and Section 424 of the Florida Building Code.
- c. The SCHOOL BOARD agrees that adjacent existing parking areas associated with Lake Mary High School shall be utilized as parking for the FACILITY and made available to the general public during hours of operation when the FACILITY is open to the general public.
- d. The SCHOOL BOARD has estimated the cost to design and construct the FACILITY to be the sum of One Million Nine Hundred Thousand (\$1,900,000) Dollars. The parties agree to jointly participate in the funding of such design and construction as follows:
 - (1) COUNTY: The maximum sum of \$1,200,000. COUNTY funds shall not be expended on constructing the restroom and classroom portions of the FACILITY.
 - (2) CITY: The maximum sum of \$300,000.
 - (3) SCHOOL BOARD: The maximum sum of \$400,000, the amount of which will be provided by the Lake Mary High School Athletic Boosters, Inc. The SCHOOL BOARD shall be solely responsible for managing and overseeing the project design and construction and may choose to fund any sums by which the actual cost of design and construction of the FACILITY exceeds the \$1,900,000 cost estimate for the FACILITY. The SCHOOL BOARD shall have sole determination to modify the project scope and design as necessary to ensure the total project expenses do not exceed the \$1,900,000 budget.
 - (4) Any funds remaining at the completion of the project shall be returned proportionally to the COUNTY, CITY, and SCHOOL BOARD per amounts contributed in subsection 2.d.

The parties intend that the design of the FACILITY can commence in Fiscal Year (FY) 2007-2008.

- e. The CITY agrees to pay to the SCHOOL BOARD not to exceed \$300,000, based on its proportionate share of invoices certified by SCHOOL BOARD as completed work, in accordance with the shares of the entire estimated cost set forth in subsection 2.d, above. CITY shall reimburse the SCHOOL BOARD the amount certified and requested in each invoice

within 30 calendar days of receipt of the invoice. The CITY represents that \$300,000 in funds have been appropriated and encumbered for this purpose.

- f. The COUNTY agrees to pay to the SCHOOL BOARD not to exceed \$1,200,000, based on its proportionate share of invoices certified by SCHOOL BOARD as completed work, in accordance with the shares of the entire estimated cost set forth in subsection 2.d., above. COUNTY shall reimburse the SCHOOL BOARD the amount certified and requested in each invoice within 30 calendar days of receipt of the invoice. The COUNTY represents that \$1,200,000 in funds have been appropriated and encumbered for this purpose.
- g. The SCHOOL BOARD, COUNTY and CITY agree that the cost of design, administration and construction of the FACILITY shall not exceed the \$1,900,000 budget unless mutually agreed to by all parties as a properly executed amendment to this agreement indicating the additional cost sharing amount to be funded by each party. Further, it is agreed that the scope of the FACILITY as described in ¶ 2 shall not be expanded unless specifically agreed to by the SCHOOL BOARD and that the SCHOOL BOARD reserves the right to reduce the scope of the FACILITY to conform it to the available funding as set forth herein, provided that a swimming pool of no less than 50 meters x 75 feet shall remain in the scope, unless otherwise agreed by and between the parties.

3. PAYMENTS:

- a. No work or expense shall be incurred by the SCHOOL BOARD until all parties execute this agreement.
- b. All disbursements by the SCHOOL BOARD in planning, design and construction of the FACILITY shall be fully documented and available, upon request, for public inspection or audit in accordance with *Chapter 119, Florida Statutes (2006)*.

4. SCOPE OF USE OF FACILITY: In consideration of the participation by the COMMUNITY in provision of land and funding for the FACILITY, SCHOOL BOARD agrees to open the FACILITY for COMMUNITY swimming and other use by members of the COMMUNITY as a public recreational resource for the benefit of the COMMUNITY. The SCHOOL BOARD may establish reasonable charges for the use of the FACILITY. Children under 5 years of age shall not be permitted to be present in or on the FACILITY.

- a. It is hereby agreed by and between the CITY, COUNTY, and SCHOOL BOARD, that the SCHOOL BOARD shall be solely responsible for the design, construction, control, operation, maintenance, repair, and supervision of the FACILITY and that neither the CITY nor the COUNTY shall have any responsibility in law or fact for the design, construction, control, operation, maintenance, repair, and supervision of the FACILITY except and only as set forth in Section 2 hereof.
 - b. It is further agreed to, by and between the CITY, COUNTY, and SCHOOL BOARD that the SCHOOL BOARD may enter into an agreement or agreements with third-parties for the operation, maintenance, repair, and supervision of the FACILITY, but that any such agreement or agreements shall not relieve the SCHOOL BOARD of any of its agreements as herein stated.
 - c. The FACILITY shall be operated for the exclusive use of the SCHOOL BOARD during regular school attendance days and hours of Lake Mary High School, including for a period of at least 30 minutes prior to the start of the regular school day and 30 minutes following the end of the regular school and during the prescribed seasons and other authorized times for competitive water sports as sanctioned by the Florida High School Athletic Association, such as swimming, water polo, and like sports. At all other times, the FACILITY shall be operated by the SCHOOL BOARD as a public recreational facility. The normal operating days and hours as a public recreational facility shall be consistent with other such facilities in Seminole County, Florida. The pool will be operated on a fiscal year basis to match the SCHOOL BOARD's fiscal year, July 1-June 30.
 - d. SCHOOL BOARD shall be responsible for the posting of the hours of COMMUNITY ~~use~~^{operation} of the FACILITY in an area at or near the main entrance to Lake Mary High School. The initial schedule of COMMUNITY use of the FACILITY is indicated in Exhibit "A". Changes to the schedule may be made as deemed necessary by the Principal of Lake Mary High School however, a copy of the amended schedule reflecting such changes shall be provided to the COUNTY and CITY per section 18 herein. All Parties agree to accommodate regional, state or national swim events, provided sufficient advance notice is given to the SCHOOL BOARD, CITY and COUNTY per section 18 herein.
5. CONCESSION SALES: The SCHOOL BOARD reserves for itself the exclusive right and privilege for any third-party operator, school-related club or school service organization to sell food, beverages and other concessions at the FACILITY at all times. The sale and use of alcoholic beverages at the FACILITY or on the PROPERTY shall be prohibited at all times.

6. SAFETY AND CONTROL OF PREMISES BY SCHOOL BOARD:

- a. The SCHOOL BOARD shall ensure that an adequate number of trained and certified lifeguards are on duty and policing the users of the two swimming pools at all times that the pools are open to the public, whether for school or for use by the COMMUNITY. The SCHOOL BOARD shall further ensure that the FACILITY is operated and maintained in accordance with *Chap 514, Fla. Stat. (2006)* and *Chap. 64E-9, F.A.C.*
- b. Neither the SCHOOL BOARD nor any third party operator shall permit any guest, invitee, employee, agent, or other user to engage in any disorderly conduct or to commit or maintain any waste or nuisance at the FACILITY. Further, neither the SCHOOL BOARD nor any third party operator shall permit any guest, invitee, or employee, agent or other user to engage in any gambling, sale or use of alcoholic beverages or any act or action which violates the laws of the State of Florida or of the United States.
- c. The SCHOOL BOARD shall be solely responsible for the supervision and maintenance of order at the FACILITY.

7. LIABILITY FOR CLAIMS:

- a. The SCHOOL BOARD and the COMMUNITY shall exercise their privileges hereunder at their own risk and expense. The SCHOOL BOARD, however, shall not be relieved of any duty imposed upon it by law for the maintenance of the FACILITY in a safe condition and for the supervision of the FACILITY during all hours of operation.
- b. The SCHOOL BOARD shall be responsible for the maintenance of such insurance as it deems adequate and necessary to protect the SCHOOL BOARD from the risk of loss at the FACILITY, or any contents therein owned by the SCHOOL BOARD by fire, theft, storm, hail, flood, vandalism or other similar losses.

8. CONSTRUCTION DOCUMENTS: Upon completion of design development and final construction documents, a set of such documents shall be provided to the COUNTY and CITY. The COUNTY and CITY may make written comments for revisions thereto; however, the SCHOOL BOARD shall have the authority to make the final decision as to any such comments. For purposes of enforcing the provisions of the Florida Building Code, the SCHOOL BOARD is the Authority Having Jurisdiction (AHJ) and shall provide required plans reviews and inspections of all construction.

9. SCHOOL BOARD IMPROVEMENTS: The SCHOOL BOARD shall have the right, at its sole cost and expense, to erect or permit to be erected on the PROPERTY such improvements or modifications as are reasonably necessary to further the intended use of the FACILITY, provided that such improvements or modifications neither interfere with the current or proposed educational or public uses of the FACILITY by the SCHOOL BOARD and the COMMUNITY nor violate properly adopted SCHOOL BOARD policies, or COUNTY or CITY ordinances.
10. IMPROVEMENT MAINTENANCE: Unless otherwise mutually agreed in advance in writing, any improvements made pursuant to paragraph 9, shall be the sole maintenance responsibility of the SCHOOL BOARD.
11. FACILITY MAINTENANCE:
 - a. The SCHOOL BOARD, at its cost and expense, agrees to operate, repair and maintain the FACILITY through the term of this Agreement. The SCHOOL BOARD shall perform grounds keeping, grass maintenance, shrubbery, building and fencing maintenance in accordance with its normal grounds and facility maintenance schedules and level of service for Lake Mary High School.
 - b. The SCHOOL BOARD shall safely store and maintain all chemicals and cleaning or maintenance equipment used in the performance of its responsibilities herewith and shall keep and maintain in good working order all pumps, filters, pool water heaters, and other mechanical systems used in connection with the operation of the swimming pools to be constructed on the PROPERTY. The SCHOOL BOARD shall daily test and use appropriate chemicals for the control of bacteria and algae in the swimming pool and other improvements. The SCHOOL BOARD shall repair cracks in the pool and deck surfaces, as well as on fixtures in and around the swimming pool and deck.
 - c. The SCHOOL BOARD shall keep, maintain and re-lamp all lights, lighting and electrical lines and equipment in the pool, bathhouse, pool deck and ensure that all equipment, buildings, and ancillary structures are in a safe operating condition. The SCHOOL BOARD, at its expense, shall be responsible for maintaining and re-lamping parking area light fixtures.
 - d. The SCHOOL BOARD shall make frequent visual inspections to assure the safety of the diving boards and to prevent failure due to cracking or loosening of fastening devices.

- e. The SCHOOL BOARD shall obtain all necessary regulatory operating permits per Chapter 64E-9, F.A.C.
 - f. The SCHOOL BOARD may contract with a third party for the operation and maintenance of the FACILITY. Any such third party shall be required to observe all of the terms of this agreement, which agreement shall be incorporated into any said third party contract, and said third party shall be subject to *Ch. 119* and *Ch. 286*, Florida Statutes to the extent required by law. Further, any third party operator shall maintain all financial and other records relating to the operation of the FACILITY separate and apart from all other records of the third party and shall be subject to an annual audit as directed by the SCHOOL BOARD to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the Commissioner of Education. The annual audit report shall be submitted within 75 days after the fiscal year's end to the SCHOOL BOARD. Further, any sub-contractor under any third-party operator shall be subject to the terms of this provision.
 - g. Any sub-contractor under any third-party operator shall be subject to the approval of the SCHOOL BOARD.
12. ACCESS: The COMMUNITY shall have the reasonable right of ingress and egress from the PROPERTY in a manner consistent with the terms of this Agreement.
13. LIENS: Neither the SCHOOL BOARD nor the COMMUNITY shall make any contract or agreement for the construction, alteration, repair or maintenance on the contract or agreement for the construction, alteration, repair or maintenance on the PROPERTY or of any improvement now or hereafter erected unless such contract or agreement is in writing and contains an express waiver by such contractor of any and all claims for mechanic's or materialmen's liens against the PROPERTY or any improvements now or hereafter erected thereon. Notice is hereby given that no contractor, subcontractor, or any other party who may furnish any material, service or labor for any buildings or improvements, alterations or repairs, or maintenance or operation of the FACILITY, at any time shall be or may become entitled to any lien thereon whatsoever. The SCHOOL BOARD, for itself and its assigns, agrees that anyone entitled to the use of the FACILITY under this Agreement who contracts for the building, improvement, alteration, repair or maintenance of the FACILITY or any improvements now or hereafter erected thereon shall give actual notice of this restriction, in advance, to any and all contractors, sub-contractors, or other persons or firms that may furnish any such material, service or labor.

14. UTILITY SERVICE: The SCHOOL BOARD shall initiate, contract for, and obtain in its name all utility services required for use of the PROPERTY and shall pay all charges for these services as they become due.
15. EVENT SCHEDULING: Subject to the requirements of this agreement, or any other applicable requirements of this agreement, the scheduling of COMMUNITY events and activities at the FACILITY shall be determined and performed by the SCHOOL BOARD. This schedule may be adjusted from time to time based upon mutual agreement of the COMMUNITY and SCHOOL BOARD.
16. ADDITIONS AND IMPROVEMENTS: All additions, changes, and other improvements erected or placed on the PROPERTY shall remain thereon and shall not be removed therefrom during the term of this agreement, absent mutual agreement of the parties. Upon the expiration or termination of this Agreement, all such improvements shall become the property of the COUNTY.
17. NON-SCHOOL BOARD USE: It is specifically understood and agreed by the COMMUNITY and the SCHOOL BOARD, except as herein otherwise provided, that the SCHOOL BOARD shall operate the FACILITY to benefit the public during non-school use hours. As such, the SCHOOL BOARD ~~shall~~ may charge reasonable fees and charges; for the use of the facility per the SCHOOL BOARD Facility Use Policy.
18. NOTICES: All notices, requests, demands, elections, consents, approvals, designations, and other communications of any kind shall be in writing and addressed to the parties as follows:

SCHOOL BOARD
Superintendent
Seminole County Public Schools
District Administrative Official
400 East Lake Mary Boulevard
Sanford, Florida 32773

and,

Deputy Superintendent
Seminole County Public Schools
District Administrative Office
400 East Lake Mary Boulevard
Sanford, Florida 32773

CITY OF LAKE MARY
City Manager

City of Lake Mary
100 North Country Club Road
Lake Mary, Florida 32795

SEMINOLE COUNTY
County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

Any party may change the address to which notices are to be sent by giving ten (10) days prior written notice informing the other parties of the change of address. Service of notice shall be deemed complete upon mailing.

19. **REMEDIES AND DISPUTE SETTLEMENT:** In recognition that this is an agreement among Florida local government entities, the parties acknowledge that the requirements of the Interlocal on Mediation and Intergovernmental Cooperation must be observed with respect to any disputes concerning this agreement. The parties further agree that in the event of any breach or default of the terms hereof, the parties are seeking the benefit of their bargain reflected herein. Therefore, the parties agree that the terms of this agreement may be enforced by action for specific performance and/or declaratory judgment if disputes cannot be resolved by non-judicial means, and any party against whom the action or proceeding is brought waives the claim or defense that the respondent party has an adequate remedy at law, or has failed to exhaust administrative remedies. All parties shall bear their own attorney fees and costs related to any dispute settlement or litigation proceedings concerning this Agreement.
20. **APPLICABLE LAW:** The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement.
21. **VENUE:** The parties agree that venue for any action arising out of the interpretation, performance or enforcement of the provisions of this Agreement shall be in Seminole County, Florida.
22. **WAIVER OF JURY TRIAL:** The parties agree that in the event of any action among and between any or all of the parties arising out of the interpretation, performance or enforcement of the provisions of this Agreement, such action shall be tried to Court and each expressly waives its right to jury trial in such circumstance. This provision is not applicable to actions involving third-parties.
23. **ASSIGNMENT:** The parties shall not assign this Agreement nor any interest arising herein without the written consent of all parties hereto.

24. **WAIVER:** No consent or waiver, expressed or implied, by any party to or of any breach of any covenant, condition, or duty of any party hereto shall be construed as a waiver to or any other breach of the same or any other covenant, condition or duty.
25. **DEFAULT:** No party shall be deemed in default under this Agreement if such party is delayed in the performance of any of its obligations if the delay is due to natural disasters, acts of God, restrictions, regulations or controls of any independent governmental agency, civil commotion, insurrection, acts of terrorism, sabotage or enemy or hostile governmental actions, fire or other casualty or other similar event or condition beyond the control of the party delayed. In the event of such delay, all dates for performance shall automatically be extended by a period equal to the aggregate period of such delays.
26. **HEADINGS:** The headings of each section in this Agreement are for convenience only and do not define, limit, or construe the content of such sections.
27. **MISCELLANEOUS:**
- a. Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of partnership or joint venture.
 - b. Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders where the context requires.
 - c. The rights and entitlements expressed herein are intended only for the named parties to this Agreement. The parties intend that there are no third-party beneficiaries to this Agreement.
 - d. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.
28. **SEVERABILITY:** If any one or more of the covenants or provisions of this Agreement shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.

29. TERM: The term of this Agreement shall be concurrent with the design and operational life of the facility as set forth in section 2.a. of this agreement or 99 years, whichever is longer, unless otherwise mutually agreed by the parties.
30. COMPLETE AGREEMENT:
- a. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supercedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.
- b. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly executed by authorized representatives of the parties.
31. THIS AGREEMENT shall become effective upon approval and execution by the party last signing.

CITY OF LAKE MARY, FLORIDA

By: _____
 Thomas C. Greene, Mayor
 Date: _____

ATTEST:

 Carol A. Foster, City Clerk

THE SCHOOL BOARD OF SEMINOLE
 COUNTY, FLORIDA

By: _____
 Barry Gainer, Chairman
 Date: _____

ATTEST:

 Bill Vogel, Secretary

BOARD OF COUNTY COMMISSIONERS
 SEMINOLE COUNTY, FLORIDA

By: _____

ATTEST:

Carlton D. Henley, Chairman
Date: _____

As authorized for execution by the Board of
County Commissioners at their _____,
2007 regular meeting.

Maryanne Morse, Clerk to the Board
of County Commissioners of Seminole
County, Florida

For the use and reliance of Seminole
County only. Approved as to form and
legal sufficiency.

Robert A. McMillan, County Attorney

High School Athletic Season
January 21 – April 30, August 15-November 15, 2008

A= Competition Pool (1/2 pool)
 B= Competition Pool (1/2 pool)
 C= Lap/Lesson Pool
 D=Classroom

	A	B	C	D
5:30 AM	Adult Open	Adult Exer.		
6:00 AM	Adult Open	Adult Exer.		
6:30 AM	Adult Open	Adult Exer.		
7:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
7:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
8:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
8:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
9:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
9:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
10:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
10:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
11:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
11:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
12:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
12:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
1:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
1:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
2:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
2:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
3:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
3:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
4:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
4:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
5:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
5:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
8:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
8:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross

Adult Open: Community Accessibility (Ages 21 and over)
 Adult Exercise: Community Accessibility (Programmed/Instructor led activity)
 Open Swim: Community Accessibility (Open to all age groups)
 Lessons: Community Accessibility (Program/Instructor led activity)
 SCUBA: Community Accessibility (Program/Instructor led activity)
 Red Cross: Community Accessibility (Red Cross Safety Training)

High School Non-Athletic Season
January 1-January 28, May 1-June 6, November 8 –December 15, 2008

A= Competition Pool (1/2 pool)
 B= Competition Pool (1/2 pool)
 C= Lap/Lesson Pool
 D=Classroom

	A	B	C	D
5:30 AM	Adult Open	Adult Exer.		
6:00 AM	Adult Open	Adult Exer.		
6:30 AM	Adult Open	Adult Exer.		
7:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
7:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
8:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
8:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
9:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
9:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
10:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
10:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
11:00 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
11:30 AM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
12:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
12:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
1:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
1:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
2:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
2:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
3:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
3:30 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
4:00 PM	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS	LMHS/SCPS
4:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
5:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
5:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
8:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
8:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross

Adult Open: Community Accessibility (Ages 21 and over)
 Adult Exercise: Community Accessibility (Programmed/Instructor led activity)
 Open Swim: Community Accessibility (Open to all age groups)
 Lessons: Community Accessibility (Program/Instructor led activity)
 SCUBA: Community Accessibility (Program/Instructor led activity)
 Red Cross: Community Accessibility (Red Cross Safety Training)

Community Season
June 6-August 15, December 15-December 31, 2008

A= Competition Pool (1/2 pool)

B= Competition Pool (1/2 pool)

C= Lap/Lesson Pool

D=Classroom

	A	B	C	D
5:30 AM	Adult Open	Adult Exer.		
6:00 AM	Adult Open	Adult Exer.		
6:30 AM	Adult Open	Adult Exer.		
7:00 AM	Adult Open	Adult Exer.		
7:30 AM	Adult Open	Adult Exer.	Lessons	
8:00 AM	Adult Open	Adult Exer.	Lessons	
8:30 AM	Adult Open	Adult Exer.	Lessons	
9:00 AM	Lessons	Open Swim	Open Swim	
9:30 AM	Lessons	Open Swim	Open Swim	
10:00 AM	Lessons	Open Swim	Open Swim	
10:30 AM	Lessons	Open Swim	Open Swim	
11:00 AM	Lessons	Open Swim	Open Swim	
11:30 AM	Lessons	Open Swim	Open Swim	
12:00 PM	Open Swim	Open Swim	Open Swim	
12:30 PM	Open Swim	Open Swim	Open Swim	
1:00 PM	Open Swim	Open Swim	Open Swim	
1:30 PM	Open Swim	Open Swim	Open Swim	
2:00 PM	Open Swim	Open Swim	Open Swim	
2:30 PM	Open Swim	Open Swim	Open Swim	
3:00 PM	Open Swim	Open Swim	Open Swim	
3:30 PM	Open Swim	Open Swim	Open Swim	
4:00 PM	Open Swim	Open Swim	Open Swim	
4:30 PM	Open Swim	Open Swim	Open Swim	
5:00 PM	Adult Exer.	Open Swim	Lessons	
5:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
6:30 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:00 PM	Adult Exer.	Open Swim	Lessons	Red Cross
7:30 PM	Adult Exer.	Scuba	Lessons	Red Cross
8:00 PM	Adult Exer.	Scuba	Lessons	Red Cross
8:30 PM	Adult Exer.	Scuba	Lessons	Red Cross

Adult Open: Community Accessibility (Ages 21 and over)

Adult Exercise: Community Accessibility (Programmed/Instructor led activity)

Open Swim: Community Accessibility (Open to all age groups)

Lessons: Community Accessibility (Program/Instructor led activity)

SCUBA: Community Accessibility (Program/Instructor led activity)

Red Cross: Community Accessibility (Red Cross Safety Training)



DATE: May 21, 2007
TO: Board of County Commissioners
FROM: *CDH* Carlton D. Henley, Chairman
SUBJECT: LAKE MARY HIGH SCHOOL SWIMMING POOL

In an effort to assist the School Board in its desire to construct a public swimming pool at Lake Mary High School in an expeditious manner, the following conditions are offered for the current contemplated funding agreement.

At the last Board of County Commissioners meeting the Board discussed that the third party agreement with the Boosters would clarify important operating components such as hours of operation available to the public. As this agreement has not yet been negotiated, it may take weeks if not months to get that done. As the School Board desires to issue an RFP for pool construction in the very near future, one method to address the Board's concerns is to modify the currently contemplated agreement with required conditions for operation in the third party agreement.

As Chairman, I plan to bring this matter up for discussion at the May 22, 2007 Board of County Commissioners meeting.

LAKE MARY HIGH SCHOOL POOL FACILITY

Types and Conditions of Use

- School Use – Use during school hours as determined by Seminole County School Board (SCSB). These uses include but are not limited to swimming instruction, physical education, and other programs as determined by the SCSB.
- School Swim/Water Polo Team Use – Use after school hours during FHSAA prescribed Swim/Water Polo seasons.
- Community Use – There shall be designated times when the facility will be available to the general public for recreational activity weekdays after school hours, weekends, during summer recess, and scheduled holidays. Community use by the public shall be set for a

nominal daily fee, monthly fee, and seasonal pass fee schedules. With appropriate parental/legal guardian supervision, the age of users shall not be a consideration.

- Program Use – Designated times when the swimming complex will be available to the general public for programmed activities (i.e. swim lessons, masters training, adult swim, Special Olympics, Red Cross, etc.).
- Club Use – Use by club programs that have contracted for time with the SCSB through the school Principal. Facility use fee will be required.
- Community use, program use, and club use may in many cases be concurrent.

Usage Agreements/Scheduling

- The facility will be scheduled by the school Principal/Designee.
- A model calendar pool schedule, sample pool use schedule, and facility lease agreements (to be amended) will be supplied by Lake Mary High School (LMHS) and will be attached to the funding agreement. The Seminole County Board of County Commissioners (BCC) expects Said attachment to be a model for actual usage of the pool during the life of this agreement. Notice provisions of fees, policies, and schedules should be provided on an annual basis to the BCC. Any consideration of substantive change in usage policies or fee structures shall be noticed to the BCC in advance of Seminole County Public School (SCPS) consideration.
- Scheduling for club use will be in accordance with established SCPS Facilities Use Procedures.
- Contract manager subject to reasonable profits after costs of maintenance, personnel and payments due on booster club bank loan upon review by LMHS principal. Rental fees should allow for the operation plus reasonable profit to booster club to cover debt service.
- All usage contracts shall be with the SCSB under the direct authority of LMHS principal.
- Fee schedule for pool/lane rental will be reflected in the facility use agreement applicable to all club rentals.
- SCSB will provide bathroom and restroom facilities.

Board of County Commissioners
May 21, 2007
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County Funding Contingencies

- Seminole County funds are to be applied to site design, site construction, pool design, pool construction, and associated pool and site related expenses. County funding shall be independent of the SCPS facilities of structured showering or classroom facilities.

Motion/Recommendation

Approve and authorize the County Attorney to amend the School Facility Joint Funding and Use Agreement accordingly. Said amended agreement shall be submitted by the County Manager to the SCSB and County Commission for final approval.

CDH:he

cc: Cynthia A. Coto, County Manager
Donald S. Fisher, Deputy County Manager