

INTERLOCAL AGREEMENT FOR LEASE OF HISTORIC COURTHOUSE

This Interlocal Agreement for Lease of Historic Courthouse (“Agreement”) is entered into by and between the Flagler County, a political subdivision of the State of Florida acting through its Board of County Commissioners, (the “County”), and the School District of Flagler County, an agency of the Florida State government, acting through its School Board, (the “District”). The County and the District may be collectively referred to as the “Parties,” and individually referred to as “Party”.

1. Contact. The contact information of the Parties for purposes of notice under this Agreement are as follows:

Party: School District of Flagler County
Address: 1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

Contact: Facilities Director
Telephone: (386) 437-7526
E-mail: freemand@flaglerschools.com

Party: Flagler County
Address: 1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

Contact: General Services Director
Telephone: (386) 313-4020
Email: mdickson@flaglercounty.gov

2. Facility.

A. For and in consideration of the covenants and obligations specified in this Agreement, the County hereby leases the Historic Courthouse building in Bunnell and associated facilities, located at 201 East Moody Boulevard, Bunnell, Florida, to the District, and District leases the facility from the County, all subject to the terms, conditions and limitations herein expressed. The lease includes the facility, parking lot, entryways and property, as further depicted on Exhibit “A”, attached hereto and incorporated herein by reference (hereinafter the “Facility”).

B. The District acknowledges that it has examined the condition of the Facility, has determined that the Facility is acceptable for its intended and permitted uses, and waives any and

all defects that may exist within the Facility. Further, the County shall not be responsible to the District, its officers, agents, employees, guests or invitees, for any damage or injury caused by or due to the Facility, or any appurtenance thereof being improperly constructed or being out of repair.

3. Use of Facility.

A. The District shall use the Facility solely for the purposes associated with its educational mission including ancillary uses that support other compatible organizations and programs which may serve to increase outreach and services to the community. Said use and operations shall comply with all rules and regulations of the state and local rules, regulations and ordinances. The District may also use the Facility for any other legal and lawful purpose that is approved, in writing, by the County Administrator and providing such uses are in compliance with all federal, state, and local regulations, including but not limited to permitting and parking.

B. The Parties agree that the manner in which the Facility is used, developed, operated and maintained is important to the County by reason of the historical significance of the Facility and its importance to County residents and visitors to the County. The District therefore agrees to develop, operate and maintain the Facility consistent with the standards agreed upon herein. The District shall not make alterations to the historical façade of the Historic Courthouse, and any work done on the façade shall require the prior written approval of the County Administrator or designee.

C. In no event shall the Facility be used for any purpose which would constitute a public or private nuisance, including but not limited to, outside storage, storage of salvage or junk, or any use not specifically permitted herein. Further, the District shall not permit any unlawful business or trade to be conducted at the Facility or any use hereof that is contrary to applicable legal and zoning requirements. The County shall have the right to terminate this Agreement in accordance with the procedures set forth in Paragraph 10(I) should District utilize the Facility in any manner inconsistent with the approved uses set forth herein.

D. Notwithstanding anything herein to the contrary, all activities conducted upon the Facility shall be under the exclusive control, management and direction of the District. Such activities shall include, but not be limited to, the educational programs and associated activities, providing for security of the Facility and of its property, and the maintenance and upkeep of the Facility in a safe, neat and clean condition. The County will have no involvement or role in the conduct of the District's business or operations in any manner.

4. Rent.

A. Rent. In consideration of the rights granted hereunder by County, the District hereby agrees to pay the County Rent, in the amount of \$XXXXXXX, plus applicable sales tax, paid, in advance, on the first day of each calendar month beginning September 1, 2024.

B. Late Payment. Penalties for late payment shall begin to accrue after the tenth calendar day of each month at the rate of five percent (5%) for each month the Rent payment is late. If by the first day of the month following the delinquency, the Rent remains unpaid, a

penalty of ten percent (10%) of the monthly rental amount shall be assessed for each month the rental payment is late until the arrearage is completely paid.

5. Effective Date/Term/Renewals/Option to Assume Maintenance and Purchase.

A. Effective Date. This Agreement shall become effective on the date of signature of the last Party to sign this Agreement (“Effective Date”).

B. Initial Term. The Term of this Agreement will commence on September 1, 2024, and shall remain in full force and effect for a period of two (2) years, unless sooner terminated in accordance with the terms and provisions hereof.

C. Renewal Terms. So long as the District is not in default of any of the terms herein and has no payment arrearages, this Agreement may be renewed by the District for two (2) additional four-year terms. The County shall advise the District in writing in the event of a default which results in an extinguishment of the right to automatic renewal of this Agreement. Absent such notice, this Agreement shall automatically renew unless the District gives written notice of an election not to exercise this option at least ninety (90) days prior to the expiration of the then-existing term. Such option shall thereafter be and become null and void and of no further force and effect.

D. Option to Assume Maintenance. On each anniversary date of this Agreement, the District shall have the option to assume the maintenance obligations originally undertaken by the County pursuant to Paragraph 10(A)(1) below. In consideration of assuming said obligations, the District’s rent will be reduced to cover only the County’s cost of insuring the building plus common area maintenance costs. To invoke this provision, the District will provide the County at least thirty days advance notice prior to the anniversary date.

E. Option to Purchase. In addition, so long as the District is not in default of any of the terms herein and has no payment arrearages, the District shall have the option any time after the end of the initial term to purchase the Facility and take fee simple ownership thereof, subject to the County’s right of refusal. To exercise this option, the District must provide the County one hundred eight days prior notice of its desire to exercise the option to purchase. Upon receipt of the District’s notice of exercising the option to purchase, the County will have thirty days to provide notice of refusal. After the expiration of thirty days, the right of refusal shall become null and void and of no further force and effect. The purchase price shall be the average appraisal price determined by an appraiser hired by the County and an appraiser hired by the District. The appraisers must be state certified general real estate appraisers. It is acknowledged and agreed that the deed conveying ownership of the Facility to the District shall contain restrictions that the Facility may only be used for public purposes and that the façade of the Historic Courthouse shall be preserved.

6. Amount of Insurance Required. The County will maintain property insurance for the Facility. The following types of insurance are required to be carried by the District, at its

own cost and expense, throughout the Term of this Agreement. The amounts of such required coverages are:

Commercial General Liability	\$5,000,000 combined single limits, per occurrence based
Fire Legal Liability	\$100,000
Workers Compensation	As required by the laws of Florida.
Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000 per claim, \$2,000,000 aggregate

Prior to the Effective Date, the District shall cause certificates of insurance to be furnished to the County, evidencing all such coverage. In addition, all such certificates shall provide that the policies shall not be cancelled, nor the limits thereunder reduced, without first providing at least thirty (30) calendar days' written notice thereof to the County. The above coverage amounts may be increased, if mandated by changes in state law.

7. Utility and Service Charges. The District, at its sole cost and expense, shall cause the installation of and promptly pay for all utility, communication and other services furnished to, or consumed within, the Facility, including, but not limited to, electricity, cable, water, sewer, heat, telephone, janitorial, grounds maintenance, solid waste handling and removal, including garbage pickup and any use of commercial dumpsters, and all charges related to any of these services, including any tap-in, connection and/or impact fees. For those utility services which are already in place, the District shall cause the associated billing to be transferred to the District's name District as soon as possible, but in no case later than September 15, 2024.

8. Improvements to Facility.

A. Improvements to Facility by County. The County retains the right to make improvements to the exterior façade of Facility, during the term of the District's tenancy, to include applying for historic grants and historic restorations in the future. However, the County shall coordinate such activities with the District and shall not otherwise interfere with the ability of the District to operate a school, including school administration, or other educational programming.

B. Improvements to Facility by District.

1. The District desires to make certain alterations and improvements to the Facility to improve safety, efficiency, and functionality for educational purposes (the "District Improvements"), using the District's own funds, in compliance with all applicable County ordinances and codes, state and federal statutes, rules and regulations, the City of Bunnell Comprehensive Plan, the building codes, and the City of Bunnell Land Development Code. In the event of a conflict among such regulations, the more restrictive shall apply unless expressly

waived by the County Administrator in writing based upon discretion conferred by applicable legal requirements.

2. The District shall select and engage qualified architects, engineers and other necessary professionals, and shall cause the preparation of design and construction documents for the District Improvements. The construction documents shall detail the requirements for the construction of the District Improvements, based on materials and systems selected by the District. Following preparation of the design and construction documents, the District will provide a copy to the County Administrator, for review and approval, which shall not be unreasonably withheld, conditioned or delayed.

3. The District shall obtain all necessary permits, approvals, and licenses required for the construction, use and occupancy of the District Improvements. The District shall further provide, or cause to be provided, a payment and performance bond, or similar form of security.

4. Any construction agreements entered into between the District and a general contractor or other contractor in privity with the District must provide that the County will not be liable for any work performed or to be performed for the District, nor shall the County be liable for any of the financial consideration or other obligations under such agreements.

5. Construction of the District Improvements shall be in accordance with the design and construction documents as approved by the County Administrator, which shall not be unreasonably withheld.

6. The District Improvements shall be made in a good, workmanlike and lien free manner. Upon completion, the District shall deliver to the General Services Director an “as built” set of plans and specifications for the District Improvements.

7. Upon receipt of a written request from the County during the District’s tenancy under this Agreement, the District shall assign in writing to the County all rights which District may then possess against (1) any parties who prepared the construction documents for the District Improvements, and (2) all contractors, subcontractors and material suppliers for the District Improvements, reserving to the District the right to subsequently prosecute any claims against said parties that may arise as a result of any claims, action, loss, damage or expense sustained by the District arising out of any of the construction documents for the District Improvements or the construction of the District Improvements.

8. For the separate consideration of valuable consideration paid to it by the County, receipt of which is hereby acknowledged, the District agrees to indemnify, defend and hold the County, its officers, employees and agents harmless from and against all liabilities, losses, damages (including theft and loss of use), expenses, actions, demands and claims (including reasonable attorneys’ fees) in connection with or arising out of any physical injury or alleged physical injury to persons (including death), or damages or losses or alleged damages or losses to tangible property or the use or loss of use thereof, sustained or alleged to have been

sustained in connection with or to have arisen out of the design or construction of the District Improvements except to the extent caused by the County's willful misconduct or gross negligence.

C. Additional Improvements.

1. Upon possession of the Facility, and following completion of the District Improvements, the District, at its sole cost and expense, may make additional improvements, construct any additional buildings, facilities, or make any changes, alterations or improvements that may be necessary for its use, subject to County's landlord lien for Rent. County approval for minor, nonstructural work not requiring permits shall be obtained from the General Services Director, in writing. For all other work, the District must obtain written approval from the County Administrator or designee. The additional improvements shall proceed in accordance with, and be subject to, the requirements set forth in Paragraph 8(B), above.

9. Interest of County Not Subject to Liens. It is mutually agreed that neither the fee simple title to the Facility, nor any interest of the County in the Facility may be subject to liens of any nature arising by reason of any act or omission of the District or any person claiming under, by or through the District, including but not limited to, mortgage liens, mechanics' and materialmen's liens. If, because of the District's act or omission, any construction lien, claim of lien or professional lien is filed pursuant to Florida Chapter 713 or any successor law against the County on any portion of the Facility, or in the event any other type of lien is filed against the County on any portion of the Facility, the District shall, at its own expense and cost, cause said liens to be discharged, released or satisfied within ninety (90) days from the date of the County's written notice.

10. General Terms and Conditions.

A. Repairs and Maintenance.

1. **County Maintenance Obligations.** During the District's tenancy under this Agreement, the County will maintain the following items: exterior façade of the Historic Courthouse; HVAC units; the roof; fire alarms, smoke detectors, exist signage, fire sprinklers, and fire extinguisher certifications; security system; elevator maintenance, licensing, and phone; and termite/pest control.

2. **District Maintenance Obligations.** During the District's tenancy under this Agreement, the District, at its own cost and expense, shall keep all exterior grounds, buildings, structures, improvements, equipment, fixtures, furnishings and other property installed in good condition and repair, in a clean and attractive condition, and free of impairment from physical deterioration and functional obsolescence. The District shall use all reasonable precaution to prevent waste, damage or injury to the Facility. Should the District fail to keep and maintain the Facility in good condition and repair or shall fail to use all reasonable precaution to prevent waste, damage or injury to the Facility, the District shall be deemed to be in default, pursuant to Paragraph 10(I).

3. **Duty to Clean and Ventilate.** The District hereby acknowledges mold and mildew can grow in the Facility if the Facility is not properly maintained and ventilated. Consequently, the District agrees to allow air to circulate in the Facility. District further agrees to notify County immediately whenever District learns of any condition which could lead to a buildup of moisture in the Facility, including, but not limited to plumbing leaks, broken window or door seals, accumulation of rainwater or other moisture around windows or doors, broken water lines or sprinklers, inoperable doors or windows and/or any failure or malfunction in the heating, ventilation or air-conditioning system in the Facility. If District notices mold or mildew growing in the Facility, District agrees to notify County of the condition immediately in writing.

B. Maintenance By Default. In the event the District does not cure the breach of its duty to maintain, the County shall have the option in its sole discretion to perform the maintenance and to recover such costs from the District. The District shall promptly pay or reimburse the County for the cost of any and all maintenance, replacement and repair which may be required to restore the Facility and any of its improvements, fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage caused by, the District or any of its officers, employees, agents, invitees or licensees, or which otherwise results from the District's use or occupancy of the Facility, reasonable use and wear excepted. The District shall have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Facility and the improvements, fixtures, equipment and mechanical systems located therein, and the Term of this Agreement shall not be extended nor shall there be any abatement of the sums payable to the County hereunder by reason thereof. The District shall promptly pay or reimburse the County for the cost to the County of any and all maintenance, replacement and repair which may be required to restore the Facility and any of its improvements, fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage caused by, the District or any of its officers, employees, agents, invitees or licensees, or which otherwise results from the District's use or occupancy of the Facility. Any sums not paid by the District within thirty (30) days from the date of the County's invoice(s) for its costs incurred under this subparagraph shall be treated as additional Rent owed to the County by the District and shall be treated under the same provisions as are applicable to delinquent Rent payments. Further, the performance of maintenance and repair by the County shall in no event be construed as a waiver of the District's duty to maintain and repair as herein provided.

C. District's Property. Any and all furnishings, inventory, and/or personal property belonging to, or brought onto the Facility by the District or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of the District. The District may place and install trade fixtures and other personal property on the Facility for use in connection with its operations hereunder. The District shall, however, be responsible for the cost of repairing any damage to the Facility or any other improvements which are caused by the removal of any such trade fixtures and personal property. For purposes of this Agreement, the phrase "trade fixtures" is defined as any article of personal property annexed or affixed to the Facility by the District as a necessary part of the District's operations, and other lawfully present personal property on the Facility.

D. County's Right to Enter. The County and its designated agents shall have the right to enter the Facility at any reasonable time upon reasonable notice for inspection,

maintenance, repair, attending to emergencies or any other lawful purpose. In emergency situations, where loss or damage to the Facility is occurring or imminent, the County may enter any portion of the Facility for the purpose of controlling the emergency situation.

E. Taxes and Assessments. The District shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges) and impact fees which are levied against or in connection with the Facility, the District's interest therein and the property and improvements of the District for the Term hereof or attributable to the District's activities at the Facility. If the Term of this Agreement expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the term of this Agreement commences on a date other than the first day of such tax year, the District shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Agreement was in effect during such tax year by the total number of days of the applicable tax year. If this Agreement is in effect for a period less than any entire period for which an assessment other than a tax is imposed, the District shall pay a percentage of the assessment calculated by dividing the number of days this Agreement was in effect during that assessment period by the total number of days in the assessment period. The District's obligations under this Paragraph 10(E) shall survive the expiration or earlier termination of this Agreement. Nothing contained herein shall be construed as a release or waiver on the part of the County, as a political subdivision of the State of Florida, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which the County may lawfully impose on the business or property of the District.

F. Rules and Regulations. The District covenants and agrees to observe and comply with all laws, rules, and regulations of the County which now exist or may hereafter be promulgated or amended from time to time, governing conduct and the use of its facilities. The District further covenants and agrees to observe and comply with any and all valid and applicable requirements of all duly constituted public authorities and with all federal, state and local statutes, ordinances and regulations applicable to the District in its use of the Facility. The District agrees to pay or reimburse the County for any fines which may be assessed against the County as a result of the violation by the District of any applicable regulation, which payment shall be made by the District within fifteen (15) calendar days from the date of the County's invoice for such amount and documentation showing that payment of such fine is the District's responsibility hereunder. Any sums not timely paid shall be treated as additional Rent owed to the County by the District and shall be treated under the same provisions as are applicable to delinquent rental payments.

G. Indemnification. Notwithstanding anything herein to the contrary, the obligation of the District to indemnify the County *infra* is subject to the scope and monetary limitations of Section 768.28, Florida Statutes, and further, is not intended to be a waiver of the District's sovereign immunity, nor should anything herein be construed as a right of third parties to sue the District or County. Subject to the foregoing limitations, the District agrees to indemnify, defend and hold harmless the County, and the members (including, without limitation, members of the Flagler County Board of County Commissioners), officers, employees and agents of each, from and against liability (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other federal, state or local environmental statute, ordinance regulation or rule), losses, suits,

claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels), which may be incurred by, charged to or recovered from any of the foregoing: (i) by reason or on account of damage to or destruction of any property of the County, or any property of, injury to or death of any person resulting from or arising out of the acts or omissions of the District's officers, agents, employees, contractors, subcontractors, invitees or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was proximately caused primarily by the County's negligence or by the joint negligence of the County and any person other than the District or its officers, agents, employees, contractors, subcontractors, invitees or licensees, or (ii) arising out of the failure of the Agreement to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by the District. The provisions of this subparagraph shall survive the expiration or earlier termination of the Term of this Agreement with respect to any acts or omissions occurring during the Term of this Agreement.

The foregoing provisions of this subparagraph are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which the County otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by the District under this Agreement.

H. Assignment and Subletting.

This Agreement is personal to the District. Accordingly, the District may not assign this Agreement or sublet any portion of the Facility without the express prior written consent of the County, which may be withheld at its sole discretion. In the event written consent is granted by the County, the District shall provide the County with copies of the sublease(s) and any amendments thereto. Any such sublease approved by the County shall include a requirement for the subtenant to maintain insurance policies satisfactory to the County and naming the County as additional insured. Any purported assignment or sublet without the express written consent of the County, and any failure to provide the County with a sublease, if approved, or amendments thereto, shall be considered void from their inception, and shall be grounds for the immediate termination of this Agreement.

I. Defaults and Remedies.

1. Defaults by District. The occurrence of any of the following events and the expiration of the applicable cure period set forth below without such event being cured or remedied will constitute a "Default by District" to the greatest extent allowed by law:

- a. Abandonment of Facility, or a discontinuation of the District's operations.
- b. District's material misrepresentation of any matter related to this Agreement.
- c. Filing of insolvency, reorganization plan, or arrangement of bankruptcy.
- d. Adjudication as bankrupt.

- e. Making a general assignment for the benefit of creditors.
- f. If the District suffers this Agreement to be taken under any writ of execution and/or other process of law or equity.
- g. The District's failure to utilize the Facility as required in this Assignment.
- h. Any lien is filed against the Facility, or the County's interest therein or any part thereof in violation of this Agreement, or otherwise, and the same remains unreleased for a period of sixty (60) days from the date of filing unless within such period the District is contesting in good faith the validity of such lien and such lien is appropriately bonded.
- i. Failure to continuously abide by all the insurance provisions required in Paragraph 6.
- j. Failure of the District to perform or comply with any covenant or condition made under this Agreement, which failure is not cured within ninety (90) days from the date of the County's written notice stating the noncompliance shall constitute a default (other than those covenants for which a different cure period is provided), whereby the County may, at its option, terminate this Agreement by giving the District thirty (30) days' written notice. However, the occurrence of any of the events set forth in this paragraph shall constitute a material breach and default by the District, and this Agreement may be immediately terminated by the County except to the extent then prohibited by law.

2. Remedies of the County.

a. In the event of the occurrence of any of the foregoing defaults and termination of this Agreement by the County, the District shall become immediately a District-at-sufferance in accordance with Florida law, and the County, in addition to any other rights and remedies it may have, shall have the immediate right to re-enter and remove all individuals, entities, furnishings, inventory and personal property from the Facility. Any property removed may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the District, all without service of notice or resort to legal process and without being deemed guilty of trespass, or being liable for any loss or damage which may be occasioned thereby. If the District does not cure the defaults in the time frames as set forth above, and the County has removed and stored property, the County shall not be required to store such property for more than thirty (30) days. After such time, such property shall be deemed abandoned and the County shall dispose of such property in any manner it so chooses and shall not be liable to the District for said disposal.

b. The County may sue for direct, actual damages arising out of such default by the District or apply for injunctive relief as may appear necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of the District under this Agreement. For this purpose, the District agrees that the County need not post a surety bond with the court and the right to any bond is hereby waived. The County shall be entitled to reasonable attorneys fees and costs incurred arising out of the District's default under this Agreement.

J. Surrender at End of Term/Termination.

1. At the end of the Term or upon the earlier termination of this Agreement, the District agrees to surrender and yield possession of the Facility, improvements constructed thereon and fixtures to the County, peacefully and without notice, free and clear of all debts, mortgages, encumbrances and liens. It shall be lawful for the County to re-enter and to repossess the improvements without further process of law.

2. The improvements and fixtures shall be in good condition and repair in all respects, reasonable use and wear excepted, and the District agrees to reimburse the County for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition.

3. The District may remove furnishings, inventory, personal property, trade fixtures, and any improvements not a part of any structure upon the expiration or termination of this Agreement if the removal can be done in a manner that does not injure or damage the Facility. If the District fails to remove such furnishings, inventory, personal property, trade fixtures and improvements within ten (10) days after the effective date of the expiration or termination, or within ten (10) days from the date of the County's written notice, whichever is later, the County may remove and dispose of any furnishings, inventory, personal property, trade fixtures, and improvements not removed by the District. In that case, the District is deemed by this Agreement to have sold, assigned and transferred to the County all of the District's right, title and interest in the furnishings, inventory, personal property, trade fixtures, and improvements not removed by the District.

4. The Parties agree that, to confirm the automatic vesting of title as provided for herein, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

K. Holding Over. It is agreed that if the District, or any assignee or sub-tenant thereof, shall continue to occupy the Facility after any termination of this Agreement without the prior written consent of the County, then such tenancy shall be a tenancy-at-sufferance, the County shall be entitled to double the monthly Rent specified in Paragraph 4 hereof, and acceptance by the County of any sums after any such termination shall not constitute a renewal of this Agreement or a consent to such occupancy, nor shall it waive the County's right of re-entry or any other right available to it under the laws of Florida or the provisions of this Agreement.

L. Costs and Attorneys' Fees. In the event that the either Party uses the services of an attorney to collect any sums due hereunder from the other Party, or to pursue any remedies or resolution related to a default hereunder, or in the event one Party is the prevailing party in any action to enforce any provision of this Agreement or in any other legal proceeding at law or in equity arising hereunder or in connection herewith, including any bankruptcy or bankruptcy appeals, the losing Party shall reimburse the prevailing Party for all reasonable costs, attorneys' fees and all other actual expenses incurred by the prevailing Party, whether the prevailing Party uses in-house or contracted counsel, in the defense and/or prosecution of such legal proceeding and in any appeals, including, but not limited to, fees and expenses for paralegals, investigators, legal support personnel and expert witnesses.

M. Sums Paid by County. If the County has paid any sum or sums or has incurred any obligation or expense which the District has agreed to pay or reimburse the County for, or if the County is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of the District to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed additional Rent due hereunder and the District shall reimburse the County therefor promptly upon demand. Any unpaid sums shall be treated under the same provisions as are applicable to delinquent rental payments.

N. Brokerage Commissions. The District warrants that no real estate commission is payable by the County to any person or entity in connection with this Agreement, and the District does hereby agree to indemnify and hold completely harmless the County from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels) incurred by the County as a result of any claims therefore.

O. County's Reserved Rights.

The County reserves the right, during the term of the District's tenancy, for itself and others to utilize and maintain existing utility easements over, under, across and through the Facility, and to run water, electrical, telephone, gas, drainage and other lines over, under, across and through the Facility and to grant necessary utility easements therefor.

P. Hazardous Materials.

1. **Definitions.** As used herein, the following terms shall have the meanings hereinafter set forth:

i. **"Environmental Laws"** shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted.

ii. **"Hazardous Materials"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. **"Hazardous Material"** includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, also commonly known as the "Superfund" law, as amended (42 U.S.C. **Sections** 9601 et seq.) ("**CERCLA**"), or pursuant to Chapters 376 and 403, Florida Statutes; any "hazardous waste" listed pursuant to **Section** 403.72, Florida Statutes, or any waste which conforms to the criteria for hazardous material adopted by the County; any asbestos and asbestos containing materials; lead based paint; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids; and any materials listed as a hazardous substance in the County's rules and regulations.

iii. **"Release"** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or on any property.

2. **District's Agreement.** The District agrees that neither it nor its officers, agents, employees, contractors, subcontractors, subtenants, licensees or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of in the Facility.

3. **Environmental Indemnity.** The District shall indemnify, defend and hold harmless the County from and against any and all loss, damage, cost or expense (including attorneys fees) arising during or after the term of this Agreement as a result of or arising from (i) a breach by the District of its obligations contained in Subparagraph (P)(2) above, or any Release of Hazardous Materials from, in, or about the Facility caused by the act or omission of the District, its officers, agents, employees, contractors, subcontractors, subtenants, licensees or invitees.

4. **Environmental Audit.** Upon reasonable notice to the District, the County may conduct or cause to be conducted through a third party that it selects, an environmental audit or other investigation of the District's operations to determine whether the District has breached its obligations under Subparagraph (P)(2) above. The District shall pay all costs associated with said investigation if such investigation shall disclose any such breach by the District.

S. Miscellaneous.

1. The paragraph headings contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

2. Notwithstanding anything herein contained that may appear to be to the contrary, it is expressly understood and agreed that, except for the District's right to possession of the Facility, the rights granted under this Agreement are non-exclusive.

3. Except as expressly prohibited herein, the provisions of this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties hereto.

4. Time is of the essence to this Agreement.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, except for its conflict of law provisions. It is agreed that if any covenant, condition or provision contained herein is held to be invalid by any State of Florida court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

6. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreement or document pertaining to the operations of the District hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against the County, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member (including, without limitation, members of the Flagler County Board of County Commissioners), officer,

employee or agent, as such, past, present and future, of the County, either directly or through the County, or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by the County. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any County member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to the County, or any receiver therefor or otherwise, or any sum that may remain due and unpaid by the County, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

7. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and any representation or statements heretofore made with respect to such subject matter, whether oral or written, are merged herein. This Agreement may be altered or amended only by written instrument specifically referring to this Agreement and executed by both Parties hereto with the same formalities as the execution of this Agreement.

8. As required by Florida law, the County hereby includes the following notifications as part of this Agreement:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

PUBLIC ENTITY CRIMES: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$15,000 for a period of 36 months from the date of being placed on the convicted vendor list.

9. The exclusive jurisdiction and venue for any action to interpret and/or enforce the terms of this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

10. Nothing in this Agreement shall abrogate or waive either Party's Sovereign Immunity or the provisions of §768.28, *Florida Statutes*.

11. Continued performance by either Party hereto pursuant to any provision of this Agreement after a default of any provision herein shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default, and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

12. Recordation. This Agreement shall be recorded by the County in the Official Records of Flagler County, Florida, within fourteen (14) days after the County enters into this Agreement.

13. Relationship of the Parties. Nothing in this Agreement shall be construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the Parties herein, shall be deemed to create any relationship between the Parties hereto other than the relationship of County and the District.

14. No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person has or will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

[This space intentionally left blank; signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives below.

APPROVED by Flagler County this 5th day of August 2024.

**FLAGLER COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____
Andrew S. Dance, Chair

1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

ATTEST:

APPROVED AS TO FORM:

Tom Bexley, Clerk of the
Circuit Court and Comptroller

1769 E. Moody Blvd., Bldg. 1
Bunnell, FL 32110

Sean S. Moylan
Deputy County Attorney

[Signature Page to Follow.]

Approved by the School Board on the ____ day of _____ 2024.

SCHOOL DISTRICT OF FLAGLER COUNTY

By: _____
William Furry, Chairman

1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

ATTEST:

Lashakia Moore, Superintendent

1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110

APPROVED AS TO FORM:

David Delaney, Board Counsel

[Exhibit A To Follow.]

Exhibit A

LEGAL DESCRIPTION

Historic Courthouse/Annex Parcel

A PARCEL OF LAND LYING EAST OF U.S. HIGHWAY NO. 1 (STATE ROAD 5) WITHIN A PORTION OF GOVERNMENT SECTION 15, TOWNSHIP 12 SOUTH RANGE 30 EAST, FLAGLER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS ALL OF BLOCK 133, OF THE SUBDIVISION PLAT TOWN OF BUNNELL, AS RECORDED IN MAP BOOK 1, PAGE 2 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.

Parking Lot/ Open Space/Park Parcel

A PARCEL OF LAND LYING EAST OF U.S. HIGHWAY NO. 1 (STATE ROAD 5) WITHIN A PORTION OF GOVERNMENT SECTIONS 14 AND 15, TOWNSHIP 12 SOUTH, RANGE 30 EAST, FLAGLER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS ALL OF BLOCK 122 OF THE SUBDIVISION PLAT TOWN OF BUNNELL, AS RECORDED IN MAP BOOK 1, PAGE 2 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.