

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
CONSENT/ AGENDA ITEM # 7g**

**SUBJECT:** Approval of Lease Agreement between Flagler County and the Florida State Guard (FSG) for County-owned Property, in Order that FSG may Construct and Operate a Training Facility, and Undertake Activities Deemed Necessary During a Declared Emergency.

**DATE OF MEETING:** December 18, 2023

**OVERVIEW/SUMMARY:** This is an update to the lease agreement with the Florida State Guard presented to the Board at its August 7, 2023, regular meeting. Since that time, staff have continued to work with the Florida State Guard (Guard) on the terms of the lease and the scope of the training facility. Under the lease, the Guard will lease a portion of a parcel on Justice Lane in Bunnell (Parcel ID 15-12-30-0650-000D0-0060) in order to construct a training facility inclusive of a shooting range, shoot house, driving range, and office and classroom space. The lease is for thirty years with an option to renew for ten additional years, forty years total. Upon expiration of the lease, the Guard has the option to purchase the site at fair market value.

When not in use by the Guard, the Sheriff's Office and Fire Rescue will have access and use of the facility for training.

**STRATEGIC PLAN:**

- Economic Vitality G2: Diversify Tax Base to Improve the Local Economy
- Effective Government G2: Build & Maintain Relationships to Support Effective & Efficient Government
- Public Health & Safety G3: Improve Public Safety Response and Service Delivery Capabilities

**FUNDING INFORMATION:** All funding for construction, improvements, and maintenance will be undertaken and funded by the Florida State Guard. Further, FSG will provide cooperative use of the Training Center, making it available to FCSO personnel, FCFR personnel, and personnel of municipal law enforcement within the county.

**DEPARTMENT CONTACT:** Jorge Salinas, Deputy County Administrator 386-313-4001

**RECOMMENDATIONS:** Request the Board approve the resolution and lease agreement between Flagler County and the Florida State Guard as approved by the County Administrator and as approved as to legal form by the County Attorney.

**ATTACHMENTS:**

- 1) Resolution
- 2) Lease

## RESOLUTION 2023 - \_\_\_\_

**A RESOLUTION OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS  
AUTHORIZING THE LEASE OF COUNTY LANDS TO THE FLORIDA STATE GUARD**

**WHEREAS**, the Florida State Guard (“State Guard”) has requested to lease a portion of lands along Justice Lane in Bunnell, owned by the Flagler County Board of County Commissioners (“Board”), for use as a training facility; and

**WHEREAS**, the Board finds the property being requested for lease is needed by the State Guard for training, that such use promotes the public interest and welfare, and that the property is not needed for County purposes; and

**WHEREAS**, the initial term of the lease shall be for thirty years with an option to renew for an additional ten years, and the State Guard shall have the option to purchase the site at fair market value upon expiration of the initial or renewal term; and

**WHEREAS**, there shall be no rent for use of the space; however as consideration for lease of the premises, the State Guard shall construct training facilities on the site and shall allow coordinated use of said facilities by personnel of certain local, public safety agencies; and

**NOW THEREFORE**, be it resolved by the Board of County Commissioners, that:

1. The above recitals are incorporated as if fully set forth herein. Further, the terms and conditions of the lease, approved on the same day herewith, are incorporated herein by reference.
2. This Resolution supersedes and replaces Resolution 2023-65 adopted by Flagler County on August 7, 2023.
3. This Resolution is adopted in accordance with the requirements of Section 125.38, Florida Statutes. The lease to the State Guard is hereby approved.
4. This Resolution shall take effect upon adoption.

**RESOLVED AND ADOPTED** by the Flagler County Board of County Commissioners this 18<sup>th</sup> day of December 2023.

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

**ATTEST:**

\_\_\_\_\_  
Andrew S. Dance, Chair

\_\_\_\_\_  
Tom Bexley, Clerk of the Circuit  
Court and Comptroller

**APPROVED AS TO LEGAL FORM:**

Sean S. Moylan  Digitally signed by Sean S. Moylan  
Date: 2023.12.05 16:48:57 -05'00'  
\_\_\_\_\_  
Sean S. Moylan, Deputy County Attorney

**LEASE AGREEMENT BETWEEN  
FLAGLER COUNTY AND  
THE FLORIDA STATE GUARD**

THIS LEASE AGREEMENT (“Lease” or “Agreement”) is entered into by and between the Flagler County Board of County Commissioners, a political subdivision of the State of Florida, (“County”) and the Department of Military Affairs, Division of the Florida State Guard (“Guard”).

***PREAMBLE***

**WHEREAS**, the Guard was created and authorized pursuant to Section 251.001, Florida Statutes, separate and apart from the Florida National Guard, to be used exclusively within the State and which may not be called, ordered, or drafted into the armed forces of the United States; and

**WHEREAS**, the Guard is authorized to organize and train forces composed of officers commissioned, noncommissioned, and such able-bodied citizens of the state to assist in maintaining law and order at the direction of the Governor; and

**WHEREAS**, the Guard desires to establish a multi-use training facility to support their mission; and

**WHEREAS**, the County recognizes a governmental interest in leasing land and providing access to other lands and facilities, subject to the terms herein, to support the Guard’s mission; and

**WHEREAS**, the County owns certain real property along Justice Lane in Bunnell, more particularly depicted in Exhibit A, attached hereto and incorporated herein (the “Site”), which is currently used for public safety purposes including the County Jail, training of Flagler County Fire Rescue, and E911 backup; and

**WHEREAS**, the Guard has requested, and the County has agreed, to lease to the Guard a portion of the Site, as defined herein and depicted in Exhibit A (the “Leased Premises” or “Premises”), and to license the Guard to use another portion of the Site, also defined herein and depicted in Exhibit A (the “License Area”) in a public partnership, subject to the terms and conditions herein.

**NOW THEREFORE**, in consideration of the mutual promises and obligations described herein, the parties agree as follows:

- 1. RECITALS.** The above recitals are true and correct, form a material part of this Agreement, and are fully incorporated herein.

- 2. LEASED PREMISES.** County does hereby lease, let, and demise to the Guard the Leased Premises identified on Exhibit A and labeled Future State Guard, pursuant to the terms, conditions, and covenants hereof. The Leased Premises is a subparcel of a larger sixty-two acre tract located generally northeast of Justice Lane in Bunnell. The County shall provide easements on the Site for utilities, signage, and public access located outside of the Leased Premises as necessary to allow the Guard to complete the training facilities to be constructed on the Leased Premises pursuant to the terms and conditions of this Lease and the Conceptual Site Plan, attached hereto as Exhibit “B” and incorporated herein by reference. The Guard shall have the right of ingress and egress to and from the Leased Premises from State Road 11 along Justice Lane.
- 3. TERM AND COST.**

  - a. Term.** The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of thirty (30) years thereafter, unless sooner terminated or renewed in accordance with the terms and provisions hereof.
  - b. Effective Date of Lease.** The Effective Date of this Agreement is the date this Agreement is fully executed by the duly authorized representatives of the parties.
  - c. Possession of the Leased Premises.** Possession of the Leased Premises by the Guard shall be deemed to begin on the Effective Date of this Lease even if the Guard is not actually then in possession of the Leased Premises.
  - d. Cost.** The Lease contained herein is granted at no cost to the Guard.
- 4. AUTHORIZED USE OF LEASED PREMISES.** The Guard shall have use of the Leased Premises for the construction and operation of the Improvements (as defined herein), training activities for the Guard, as well as any other use deemed necessary during an officially declared disaster or emergency from the Governor of Florida. All uses and occupancy shall conform to all current (as revised or superseded) laws, regulations, and codes. The rights and privileges granted pursuant to this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the County Jail, or adjacent facilities used by the County for Flagler County Fire Rescue training or other public safety purposes.

  - a. Other Uses Prohibited.** The Guard shall not use the Premises for residential, commercial, industrial or any other non-governmental uses other than those permitted above or during an officially declared disaster or emergency. If the Guard uses the Leased Premises in some other manner, the County shall serve a notice of default upon the Guard with a 30-day period to correct any default. If after 30 days the default is not corrected, then the County may terminate the Lease.
  - b. Additional Uses Require Permission.** Additional uses may be hereafter authorized by the County, but only upon such terms and conditions as may be set

out in writing and authorized by the County. Authorization for such other uses may not be unreasonably withheld by the County.

## 5. CONSTRUCTION OF IMPROVEMENTS.

- a. Construction of Improvements.** The Guard has inspected the Leased Premises and represents it is suitable for the proposed use as a training facility. The Guard acknowledges the County has made no representations or warranties relating to the suitability of the Premises for any particular use. The Premises is in a substantially natural state, and the Guard must make and construct certain Improvements before fully utilizing the Site.

The Guard shall construct or cause to be constructed the following improvements on the Leased Premises: administrative offices, a firearms range, tactical shoot house, and reinforced parking lot, an access to Justice Lane and associated utilities, parking, and stormwater facilities (the “Improvements”). Any other related infrastructure or structures necessary to serve the Leased Premises shall be subject to written approval of both parties. The Guard shall at its sole cost and expense install underground to County’s specifications all utility lines to serve the Improvements. The layout of the Improvements to be constructed is generally depicted on the Conceptual Site Plan, attached hereto and incorporated herein as Exhibit B. The parties acknowledge and understand that the Conceptual Site Plan is subject to changes and adjustments during planning and construction of the Improvements, and such changes or adjustments shall be approved by the Guard, County Administration and Sheriff’s Office prior to construction of the various Improvements. All Improvements will be done in a workmanlike manner and will be permitted and constructed in accordance with all applicable laws, rules, and regulations. All Improvements are subject to state appropriations for the Florida State Guard.

The Guard agrees to pay all costs related to the construction of all Improvements, including but not limited to all utility hookup fees, impact fees, permit fees, and mitigation costs, if any. All Improvements constructed by the Guard are subject to state appropriations for the Florida State Guard. The Guard shall use best efforts to secure funding for all required Improvements referenced in this Agreement.

Once construction of the Improvements is complete, the Guard at its sole cost and expense shall provide the County “as-built” drawings of the Improvements.

- b. Permits, Licenses, Insurance, Taxes, Etc.** The Guard shall at all times maintain and pay for any required permits, licenses, insurances, and taxes as necessary to construct the Improvements as required by law.
- c. Conditions Precedent to the Construction of the Improvements.** The County and the Guard agree that prior to commencement of construction of the Improvements, and as condition precedent to this Agreement remaining in full force

and effect, the Guard must submit an application for public/semipublic use to the County, which application will include a site plan. The County will process the application in the normal regulatory manner and in accordance with the provisions of the Flagler County Land Development Code. Once the public/semipublic use has been obtained, the Guard may then proceed to apply for land development and/or building permits as applicable. If, despite best faith efforts, the Guard is unable to obtain any of the requisite permits within twelve months of the Effective Date of this Agreement, then this Agreement may be terminated by either party.

- d. Completion of Improvements.** Within ninety days after completion of construction of the Guard's Improvements or any other structures, the Guard shall, at its expense, provide the County with record drawings showing the "as built" condition of all such Improvements. For smaller structures or projects, the County Administrator may waive this requirement on a case by case basis. To the extent permitted by law, the Guard hereby warrants and covenants that all Improvements hereafter erected on the Premises shall be at all times free and clear of all liens, claims, and encumbrances arising in connection with the construction of such Improvements. To the extent permitted by law, the Guard hereby agrees to indemnify and hold the County harmless against any and all losses, damages, and costs, including reasonable attorneys' fees and costs, arising out of any such lien, claim, or encumbrance.
- e. Maintenance of Facilities.** The Guard, at its own cost and expense, shall keep all Improvements and supplemental improvements including buildings, structures, 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 Guard shall be responsible for maintenance and for making repairs to the Leased Premises during the Term of this Agreement. The Guard shall use all reasonable precaution to prevent waste, damage or injury to the Leased Premises.
- f. Maintenance by Default.** In the event the Guard does not cure the breach of its duty to maintain the Leased Premises, the County shall give notice of such breach to the Guard to complete the maintenance in a reasonable time not to exceed sixty days, unless additional time is agreed to in writing. Should the Guard fail to complete the maintenance or repairs within the cure period, the County will have the option in its sole discretion to perform the maintenance and to recover such costs from the Guard if the maintenance or repairs are necessitated by the act or omission of the Guard or any of its officers, employees, agents, invitees or licensees or which otherwise results from the Guard's use or occupancy of the Leased Premises, reasonable wear and tear excepted. The County 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 Leased Premises and the Improvements, the supplemental improvements, fixtures, equipment, and mechanical systems located therein, and the Term of this Agreement shall not be extended by reason thereof. Further, the

performance of maintenance and repair by the County shall in no event be construed as a waiver of the Guard's duty to maintain and repair as herein provided.

- g. Improvements to Become Property of County Upon Termination of Lease.** Except as provided in Section 12, upon the expiration or termination of this Agreement, title to all permanent buildings and Improvements constructed on the Site and any fixtures therein, except trade fixtures, furnishings, inventory, machinery, and equipment shall automatically revert to, and vest in, the County without necessity of any act by the Guard. However, 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.
- h. Trade Fixtures.** During the Term of this Agreement, all Improvements and supplemental improvements including buildings, furnishings, inventory, machinery, and equipment constructed or installed on the Leased Premises by the Guard shall be the property of the Guard, and the Guard shall have legal title thereto. Trade fixtures shall remain the property of the Guard upon expiration or termination of this Agreement. For purposes of this Lease, the phrase "trade fixtures" is defined as any article of personal property annexed or affixed to the Site by the Guard as a necessary part of the Guard's operations, and other lawfully present personal property on the Premises.
- i. Supplemental Improvements.** All improvements beyond the Improvements described above, including their design and construction, are subject to the approval of the County Administrator, which shall not be unreasonably withheld. The Guard will submit plans of any supplemental improvements to the County Administrator prior to commencing construction.
- j. Site Not Subject to Liens.** Any construction agreements entered into between the Guard and a general contractor or other contractor in privity with the Guard must provide the County will not be liable for any work performed or to be performed on the Leased Premises, and the County shall not be liable for any of the financial consideration or other obligations under such agreements. The Guard shall surrender the premise free from liens at the termination of the lease.
- k. Florida Building Code.** The Florida Building Code includes and requires the following subparts, which are applicable to occupied or public use leases: Chapter 1, Section 101.3. This code established standards for accessibility to place of public accommodation and commercial facilities by individuals with disabilities. This code shall also apply to state and local government (owned and leased) facilities pursuant to Section 553.503, Florida Statutes. It is to be applied during the design, construction and during any alteration to such buildings and facilities as required by the code.
- l. Antitrust Vendor List.** A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for

an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

- m. Appropriations.** The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature for the Florida State Guard.

## **6. SPECIAL TERMS AND CONDITIONS.**

- a. Cooperative Use of Training Center.** The Guard and County agree to enter into a Memorandum of Agreement pertaining to the cooperative use of the training site, which is attached hereto and incorporated herein as Exhibit "C".
- b. No Joint Venture.** Notwithstanding anything herein to the contrary, all activities conducted upon the Premises shall be under the exclusive control, management and direction of the Guard. The County will have no involvement or role in the Guard's business or operations in any manner or way and shall only occupy the status of a landlord. Additionally, any and all personal property belonging to, or brought onto the Leased Premises by the Guard or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of the Guard.
- c. Right of Entry.** The County and its designated agents shall have the right to enter the Leased Premises upon reasonable notice for inspection, maintenance, repair, attending to emergencies or any other lawful purpose. The County will make annual inspections of the Premises upon reasonable notice and will thereafter notify the Guard of any issues or concerns. In emergency situations, where loss or damage to the Premises is occurring or imminent, the County may enter any portion of the Leased Premises without prior notice for the purpose of controlling the emergency situation.
- e. Signage.** The Guard shall comply with all land development regulations and permitting requirements if erecting any signs on the access drive. The Guard shall be responsible for all costs and expenses of installing, maintaining, and repairing such signs.
- f. Compliance with Environmental Laws.**
  - 1. Within 90 days of the effective date of this Lease, the Guard shall conduct a baseline environmental assessment of the Leased Premises. No hazardous substances and/or materials subject to regulation by the Environmental Protection



Agency, the Florida Department of Environmental Protection, or by any other governmental agency shall be stored or disposed of on the Leased Premises except in accordance with then applicable Federal, State, and local laws, codes, rules, and regulations. The Guard shall promptly notify the County of the release of any hazardous substances on the Leased Premises or other act or omission that results in the environmental contamination of the Leased Premises. Further, neither the Guard nor any agent or party acting at the direction or with the consent of the Guard shall possess, use, transport, treat, store, or dispose of any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or petroleum, including crude oil or any fraction thereof on any part of the Premises; provided however, that the Guard shall not be prohibited from storing, dispensing, or using hazardous materials on the Premises if such activities are conducted in accordance with all applicable laws and regulations.

2. Non-range related activity. The liability for costs of remediation of any and all environmental damage or pollution required by any law, code, rule and/or regulation shall be determined in accordance with applicable law, and this liability shall survive the expiration or termination of this Agreement. The County makes no representation or warranties regarding any such now existing damage or pollution on the Leased Premises except that the County is not aware of such existing damage or pollution.

3. Range related activity. The Guard agrees to adhere to all components of the Florida Department of Environmental Protection, Best Management Practices for the lead mitigation on rifle ranges. The Guard also agrees that any ranges, once constructed, shall be industrial in nature and are intended to be utilized as ranges in perpetuity. In the event contamination is identified during the Lease term, both parties agree to enter an Environmental Stewardship Plan with the assistance of the Florida Department of Environmental Protection. During the Lease term, the County and the Guard agree to fifty percent cost sharing of any remediation required of range related contamination and any preventative measures required by the Best Management Practices Manual. If, at the termination of this Lease, the County continues to utilize the ranges in a manner that continues to or may continue to cause range related contamination, then the County shall release the Guard of any remediation costs or responsibility.

4. Negligence or Misconduct. If by appropriate inquiry it is determined that negligence or misconduct of either party results in the environmental contamination, then the party whose misconduct or negligence caused the contamination shall be responsible for the remediation at their sole expense.

5. No Vehicular Maintenance. The Guard shall not conduct or allow automotive repairs to be conducted on the Site.

- 7. INSURANCE AND LIABILITY.** The Guard is a political subdivision of the State and is responsible for its own insurance. Each party shall be liable for its own negligent or wrongful acts or omissions. To the extent permitted by law, the Guard agrees to indemnify and hold harmless the County, including the County's officers and employees, from liabilities, damages, losses, and costs, including but not limited to, court costs, expert fees, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Guard and persons employed, utilized, or serviced by the Guard in the performance of this Agreement or arising out of the Guard's access and use of the Site under this Agreement. This obligation to indemnify shall survive the expiration or earlier termination of this Agreement, and the insurance required by this Agreement shall cover the obligation to indemnify the County.
- 8. RENEWAL.** Upon 60 days written notice prior to the termination of the current lease, the Guard shall be entitled to an option to renew this agreement at the same terms and conditions set forth herein for a 10 year renewal period.
- 9. SURRENDER, DEFAULT, AND TERMINATION.**
- a. Surrender.** At the end of the Term or upon the earlier termination of this Agreement, the Guard agrees to surrender and yield possession to the County of the Leased Premises, the Improvements, and any supplemental improvements constructed thereon and the permanent fixtures installed on the Site, excluding trade fixtures as further explained herein, 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, supplemental improvements, and fixtures without further process of law.
- i. The Improvements, supplemental improvements, and fixtures shall be in good condition and repair in all respects, reasonable use and wear excepted.
  - ii. If otherwise in compliance with this Agreement, the Guard may remove furnishings, inventory, personal property, trade fixtures and any improvements not a part of any structure or not affixed to the real property, upon the expiration or termination of this Agreement, if the removal can be done in a manner that does not injure or damage the Leased Premises. If the Guard fails to remove such personal property and improvements within ten days after the effective date of the expiration or termination, the County may remove and dispose of any improvements and personal property not removed by the Guard. In that case, the Guard is deemed by this Agreement to have sold, assigned and transferred to the County all of the Guard's right,

title and interest in the improvements, fixtures, and personal property not removed by the Guard.

- b. Holdover.** It is agreed that if the Guard shall continue to occupy the Premises after the expiration or 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 re-enter the Premises or pursue any other right available to it under the laws of Florida or the provisions of this Agreement.
- c. Default.** The County shall provide the Guard with written notice of any determination of default at the address provided herein or any subsequently provided address. The written notice shall grant the Guard a reasonable time to cure the default, and the Guard may request additional time to cure, which will not be unreasonably withheld or denied. The Guard shall then cure or remedy the default within such written notice. If the Guard fails to correct the default as specified in the County's notice within the specified period, the County may, at its option, terminate this Agreement with a thirty (30) day written notice to terminate. Upon such termination, without further notice or demand, the County may enter upon and into the Premises, and/or any and all Improvements or supplemental improvements thereto, or any part thereof, but not including trade fixtures and personal property of the Guard, and take absolute possession of the same fully and absolutely, and such re-entry shall not be judged trespass or unlawful entry. At such time, the title to any and all buildings, Improvements, supplemental improvements or other structures placed on the Premises by the Guard shall revert to or become the exclusive property of the County, except for trade fixtures and personal property of the Guard. In addition, the County may also require all operations and/or activities to cease and be removed from the Leased Premises.
- d. Nonwaiver.** 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 irrespective of how long the default may have existed.
- e. Limitation on County's Liability.** Under no circumstance shall the Guard be entitled to compensation from the County for any permanent Improvements made by the Guard to the Leased Premises, including without limitation supplemental improvements.
- f. Other Remedies.** The County shall have all other rights and remedies available at law or in equity.

- g. Early Termination.** Should the Guard no longer require use of the Site, it shall have the right to terminate this Agreement for convenience by providing written notice of termination.
- h.** Upon the expiration or earlier termination of this Lease for any reason, the Guard shall have no further rights or responsibilities under this Lease, except the environmental assessment and release of incremental increased cost deposit as well as any environmental clean-up or remediation, if any, as described herein and in the attached MOU, and the Guard shall only be financially responsible for Improvements commenced prior to the termination of the Lease.

## **10. MISCELLANEOUS PROVISIONS.**

- a. Compliance with Laws.** The Guard shall, at its own expense, fully comply with all laws, regulations, rules, ordinances which affect this Agreement, the land to be leased hereunder, any Improvements upon the Premises, and operations thereon.
- b. Force majeure.** Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them singularly, is delayed or prevented by a bona fide force majeure. For the purpose of this Agreement, a bona fide force majeure is defined in accordance with the common law of the State of Florida as being an event or circumstance beyond the control and authority and without the fault or negligence of the party seeking relief under this Section. The maximum relief granted to either party under this Section shall be the tolling of time for the duration of the force majeure unless the force majeure event renders the purposes of this Agreement an impossibility in which case either party may terminate this Agreement. A force majeure may be deemed to excuse performance pursuant to this Agreement only to the extent such performance is actually prevented or precluded by such force majeure.
- c. Integration and Amendment.** This Agreement and the Exhibits attached and incorporated herein contains the entire agreement between the parties pertaining to the subject matter herein and therein and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties.
- d. Severability.** If any provision of this Agreement is in conflict with any applicable statute or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict and shall be deemed severable but shall not invalidate any other provision of this Agreement.

- e. **Non-waiver.** No waiver by either party of any right or remedy under this Agreement, and no failure to insist on strict performance, shall affect or extend or act as a waiver of any other right or remedy hereunder, nor shall it affect the subsequent exercise of the same right or remedy for any further or subsequent default.
- f. **Governing Law and Venue.** This Agreement shall be construed under the laws of the State of Florida. Venue for any dispute arising out of this Agreement or the Guard's use of the Premises shall be in the Seventh Judicial Circuit in and for Flagler County, Florida.
- g. **Attorney's Fees.** The parties shall be responsible for their own attorney's fees and costs of litigation incurred under this Agreement.
- h. **No Third Party Beneficiary.** It is not intended by any of the provisions of this Agreement to create in the public or any member thereof a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit against either or both parties of this Agreement. Nothing herein shall be construed as a waiver of sovereign immunity by the parties hereto.
- i. **Successors in Interest and Non-assignability.** The provisions of this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties hereto. This Agreement is personal to the Guard. Accordingly, the Guard may not assign this Agreement without the express prior written consent of the County, which may be withheld at its sole discretion. Any purported assignment without the express written consent of the County shall be considered void from its inception and shall be grounds for the immediate termination of this Agreement. The Guard may not sublet the Leased Premises or any portion thereof under any circumstances. The foregoing shall not be construed to limit the ability of the Department of Military Affairs to transfer the Guard to another agency of the executive branch of the State government. Such transfer shall not be considered an assignment by the Guard under this paragraph.
- j. **Time is of the Essence.** Time is of the essence with respect to each and every provision of this Agreement.
- k. **Radon Gas Notification.** 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.
- l. **Recordation.** This Lease shall be recorded with the County Clerk, Flagler County at the sole expense of the County, and shall be enforceable against any assigns, successors, or heirs of the premises, whether public or private. Such assigns,

successors, or heirs shall take any fee or leasehold granted by County or otherwise subject to this Lease, its terms and conditions and the leasehold estate it creates.

- l. Notice.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by certified U.S. Mail, return receipt requested or by reputable overnight carrier:

i. If to County: County Administrator  
1769 E. Moody Blvd., Bldg. 2  
Bunnell, FL 32110

ii. If to Guard: State Quartermaster  
P.O. Box 1008  
St. Augustine, FL 32085

## 11. OPTION TO PURCHASE

- a. Option.** Upon expiration of this Lease, the County hereby grants to the Guard an option to purchase the Leased Premises at a purchase price equal to the fair market value at the expiration of this Lease. The fair market value price will be for the land only as though the land was vacant. Improvements constructed and maintained by the Guard will not be considered in the fair market value. The Guard shall exercise such Purchase Option by sending written notice to that effect to County within 60 days following the day this Lease expires (the date on which Guard exercises the Purchase Option is referred to as the “**Exercise Date.**”). If Guard exercises the Purchase Option, then County shall sell the Leased Premises to Guard, and Guard shall purchase the Premises from County, upon the following terms and provisions:
- b. Closing.** The closing of the sale and purchase of the Premises from County to Guard shall be completed on a date selected by County and Guard, no sooner than sixty (60) days and no later than one hundred eighty (180) days from the Exercise Date (the “**Closing Date**”), unless the County and Guard agree to extend this period. On the Closing Date, County shall convey title to the Premises to Guard, by County Deed. Guard shall pay the Purchase Price to County by wire transfer of immediately available funds to an account designated in writing by County.
- c. Closing Preliminaries.** If Guard exercises the Purchase Option, then between the Exercise Date and the Closing Date, or within such other timeframe mutually agreed to by the Guard and the County, the Guard, at the Guard’s sole cost and expense, with the administrative ministerial assistance of the County, shall work to obtain any lot division, plat, or re-platting of the Premises, including any parcel splits necessary or desirable, in order to separate the Premises from any remaining parcel and/or property owned by the County, and facilitate County’s conveyance of the Premises, or any parcel, to Guard. Any survey(s) of the Premises and/or

any other parcel and/or property that is required for the lot division, platting or replatting process shall be obtained by Guard, at the Guard's sole cost and expense, irrespective of the cost and associated work to accomplish such task, and the lot division or plat shall be certified to both County and Guard.

- d. Closing Costs.** Any and all transfer taxes, documentary stamps, closing costs, and other such governmental charges that are assessed or imposed in connection with the conveyance of the Premises shall be paid by the Guard. The reasonable costs of obtaining the survey referenced in above shall be borne solely by the Guard. Guard shall be responsible for paying all costs and expenses associated with any title insurance that Guard desires to obtain, as well as the costs for recording the County Deed.
- e. Fair Market Value.** The fair market value of the property shall be determined by a Florida Certified General Appraiser selected by and paid by the Guard. County may, at their sole option and expense, cause a different Florida Certified General Appraiser to offer an opinion. If the two appraisals are within twenty percent of each other, the parties will split the difference to arrive at the fair market value. If the two appraisals are greater than twenty percent apart and the County and Guard cannot agree on fair market value, then the parties agree to mediate the dispute, and the parties will split the cost of said mediation.

[Signature pages to follow.]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by their duly authorized representatives on the date/s indicated below.

**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**

---

Andrew S. Dance, Chair

---

Date

ATTEST:

---

Tom Bexley, Clerk of the Circuit  
Court & Comptroller

APPROVED AS TO FORM:

**Sean S. Moylan** Digitally signed by Sean S. Moylan  
Date: 2023.12.08 11:49:49 -05'00'

---

Sean S. Moylan, Deputy County Attorney

As approved by the Flagler County Board of  
County Commissioners at its regular meeting  
on the 18th day of December 2023.

[Signature page to follow.]



**FLORIDA DEPARTMENT OF  
MILITARY AFFAIRS, DIVISION OF  
FLORIDA STATE GUARD**

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name, Title

STATE OF FLORIDA     )  
COUNTY OF FLAGLER    )

The foregoing instrument was acknowledged before me this \_\_\_\_  
day of \_\_\_\_\_, 2023, by means of [] physical presence or  
[] online notarization, by \_\_\_\_\_,  
\_\_\_\_\_, as \_\_\_\_\_ of the  
Florida Department of Military Affairs, Division of State Guard,  
who [] is personally known to me or who [] produced valid  
government issued identification.

SEAL

\_\_\_\_\_  
Notary Public

**EXHIBIT LIST**

Exhibit A     The Site  
Exhibit B     Conceptual Site Plan  
Exhibit C     MOA

# Exhibit "A"

The Site



**Exhibit “B”**

Site Plan

*See attached*

Exhibit B



ARCHITECTURAL SITE PLAN  
2021.7.15.21

PRESENTATION  
PROJECT # 221117  
DATE: 11.18.2021

A MASTER SITE PLAN FOR:  
**THE MULTI AGENCY  
REGIONAL TRAINING FACILITY**



**JPA**  
JAMES P. ANDERSON & ASSOCIATES  
1118 BROADWAY, SUITE 200  
CHICAGO, ILLINOIS 60604  
TEL: (773) 399-1000  
WWW.JPA-ARCHITECTS.COM

Exhibit B



PRESENTATION

PROJECT # 221117

DATE: 11.18.2021

A MASTER SITE PLAN FOR:  
**THE MULTI AGENCY  
REGIONAL TRAINING FACILITY**



**Exhibit “C”**

MOA

*See attached*

**MEMORANDUM OF AGREEMENT  
BETWEEN THE FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS, THE FLAGLER  
COUNTY SHERIFF’S OFFICE AND  
THE FLORIDA STATE GUARD**

This Memorandum of Agreement (hereinafter referred to as the “Agreement” or “MOA”) is made and entered into as of the date last signed by the Parties (the “Effective Date”) by and between the Flagler County Board of County Commissioners (hereinafter referred to as “BCC”), located at 1769 E. Moody Blvd., Bldg. 2, the Flagler County Sheriff’s Office (hereinafter referred to as “FCSO”), located at 61 Sheriff EW Johnston Drive, Bunnell, FL 32110, and the Florida Department of Military Affairs, Division of the Florida State Guard (hereinafter referred to as “FSG”), located at 2601 North Blainstone Road, Tallahassee, FL 32399. FCSO and FSG shall individually be referred to as the “Party” and collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, FSG and the BCC have entered into a lease agreement that allows FSG to construct and operate training facilities on premises owned by the BCC located on Justice Lane in Bunnell, Florida (the “Lease Agreement”); and

**WHEREAS**, under the Lease Agreement, FSG agrees to fund and construct certain improvements on BCC premises (the “Leased Premises”), in accordance with the terms of the Lease Agreement; and

**WHEREAS**, the BCC and FCSO shall be permitted to utilize the training facilities and ranges constructed on the Leased Premises, and shall allow other law enforcement and first responder agencies to utilize the same in cooperation with FSG and on a non-interference basis with FSG training; and

**WHEREAS**, the parties mutually agree to set out the terms and conditions for the shared use of the Leased Premises.

**NOW THEREFORE**, in consideration of the mutual obligations described herein, the parties agree as follows:

1. **RECITALS.** The above recitals are true and correct, form a material part of this Agreement, and are incorporated as if fully set out herein.
2. **LEASE.** The Lease Agreement is attached and incorporated herein as Exhibit “A”. Any terms not defined herein shall have the same meanings set forth in the Lease Agreement.
3. **TERM.** This MOA shall be in force and effect until the termination or expiration of the Lease Agreement.

4. **GENERAL TRAINING SITE MAINTENANCE.** General training site maintenance on the Leased Premises shall be the responsibility of FSG. General site maintenance includes, lawn care, landscaping care, janitorial services, pest and rodent control, electrical services, garbage disposal services, and building repairs for normal wear and tear.
5. **UTILITIES.** FSG shall be responsible for connection to and maintenance of utilities on the Leased Premises to include electric, gas, water and sewer. FSG shall maintain accounts with utility providers and be responsible for account currency.
6. **RIGHT OF FIRST REFUSAL.** FSG shall enjoy the right of first refusal regarding utilization of any training site or range on the Leased Premises 30 (thirty) days prior to any range date. FCSO and BCC will have first come, first access to scheduling and reserves ranges once this 30 (thirty) day period lapses. FSG may, at its discretion, waive this right of first refusal from time to time.
7. **TRAINING AREA AND RANGE SCHEDULING.** FSG shall provide range schedule personnel. FSG shall provide the range scheduling point of contact to FCSO. FCSO shall provide a range scheduling point of contact to the BCC. BCC emergency responders and BCC invitees shall coordinate scheduling and use of the site through the FCSO point of contact.
8. **OTHER LEAs.** Law enforcement officers (other than FCSO) shall coordinate use of the training site through FCSO and shall be the guests and invitees of the FCSO. FCSO shall ensure a FCSO staff person is on site at all times when in use by FCSO invitees. Emergency responders (other than BCC) shall request use of the training site through the BCC, and if approved, the BCC shall coordinate use of the site through the FCSO point of contact. The BCC will ensure a BCC staff person is on site at all times when in use by a BCC invitee.
9. **TRAINING AIDS, SAFETY EQUIPMENT.** Training aids are defined as targets, target backers, target stands, paper targets, silhouettes, rubberized healing targets, mobile pop-up equipment, target stands, cleaning supplies, sandbags, shooting chairs or tables, amplification equipment, and weapons racks or stands. Safety Equipment includes ear protection, eye protection, first aid kits, telephones and radios, litters, fire suppression system, and hydration supplies. Each training site or range user shall furnish all training and safety equipment required during their usage.
10. **STORAGE.** It is mutually agreed that FSG and FCSO may locate one mobile storage unit (to include an enclosed, locked cargo trailer with locked hitch, locked shipping container, or similar) on the Leased Premises for the purpose of securing training aids and safety equipment. Neither party shall store or leave unattended any weapons or ammunition in the storage unit.
11. **WEAPONS AND AMMUNITION.** Range and training site users shall provide their own weapons and ammunition at their own expense.



- 12. RANGE SAFETY OFFICER AND EMT/PARAMEDIC SUPPORT.** Range and training site users shall provide their own range safety officer/personnel and EMT/Paramedic support.
- 13. MOBILE FIRE SUPPRESSION SYSTEM.** A mobile fire suppression system shall be on hand during any usage of the training site or range that involves the discharge of any weapon. The fire suppression system shall be sufficient to extinguish grass fires commonly associated with small arms ranges. Acceptable systems may be hand-held fire extinguisher, vehicle-loaded intermediate bulk container with fixed hose or similar equipment.
- 14. INCREMENTAL INCREASED COSTS.** The incremental increased cost (IIC) is the total cost incurred due to usage of a training site or range being utilized. Incremental cost is calculated by analyzing the additional expenses involved in the utilization, maintenance, repair and readiness for one additional usage of a range or site. An example of incremental increased costs is the effect that usage has on shoot house bullet traps and walls.
- 15. INCREMENTAL COST PAYMENTS.** FSG, FCSO, BCC and any other authorized user shall pay the IIC associated with the usage of each range or training area. Each payment shall be made to FSG. FSG shall deposit each IIC payment into a maintenance account. Funds deposited into that account shall be utilized exclusively for range and training site repairs, maintenance and other costs directly associated with usage of the Leased Premises. BCC, FCSO, or FSG may request an account of the IIC payments at any time.
- 16. IIC RATES.** IIC rates shall be established each year. These rates shall be the same as IIC rates charged by Camp Blanding Joint Training Center.
- 17. UNUSED IIC DEPOSITS.** At the expiration of the Lease Agreement, or at the termination of any renewal of the Lease Agreement, or at any other time FSG surrenders the Leased Premises to the BCC, FSG shall conduct a baseline environmental assessment of the Leased Premises. Unexpended funds in the IIC shall be utilized for this study and any environmental clean-up which is required in accordance with that study. Any unexpended funds residing in the IIC account after such study and clean up shall be surrendered to the County.
- 18. DAMAGES.** Any damage to any capital improvement due to negligence, intentional act, or misconduct shall be the responsibility of the party utilizing the range or training site.
- 19. PUBLIC RECORDS.** Each party will comply with the public records laws of the State of Florida, including the requirements set forth in Chapter 119, Florida Statutes.
- 20. LIABILITY AND INDEMNIFICATION.** The relationship between the Parties is that each party is independent of each other and none is the agent of the others. Each Party and its officers, agents, and personnel shall not be deemed to be the officers, agents, or personnel of the other Parties by virtue of this Agreement or by virtue of joint

participation or administration of operations, training, or operations related to FSG, BCC, or FCSO. Each party assumes the risk of all liability arising from its respective activities pursuant to this Agreement, and from the acts or omissions of its respective officers, agents, personnel or invitees. Nothing in this Agreement shall be deemed to limit the scope of sovereign immunity provided in Florida Statute 768.28, and no Party consents to be sued other than as provided by Florida law. FSG, BCC, and FCSO, including all entities thereof, acknowledge that no entity will be held liable for any injury, illness, and/or death experienced during their respective operations, with or without participation of the other party, conducted pursuant to this Agreement.

21. **NOTICE.** Any notice or other written communications between FSG and the BCC or FCSO shall be provided in the manner set forth in the Lease Agreement, utilizing the respective mailing addresses in the preamble of this MOA.
22. **INSURANCE.** At all times pursuant to this Agreement, the activities and property of the Parties will be covered by the Parties' respective insurance policies.
23. **WORKER'S COMPENSATION CLAIMS.** Any work related injuries suffered by FSG, FCSO, or BCC personnel, or other authorized users will be reported to their respective employer and any claims for worker's compensation will be filed through the respective employer.
24. **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. In the event of any legal action to enforce the provisions of this Agreement, venue shall be in any court of competent jurisdiction in Flagler County, Florida and each party shall be responsible for their own attorney's fees and costs.
25. **ASSIGNMENT.** Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable by either Party.
26. **SEVERABILITY.** The invalidity or unenforceability of any provision in this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
27. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between the Parties.
28. **MODIFICATION OF AGREEMENT.** No modification, addendum, or amendments of any kind whatsoever may be made to this Agreement unless approved in writing and signed by the Parties to this Agreement.
29. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed in any way to waive the sovereign immunity of the BCC, FCSO, or FSG under Florida Statute 768.28.

**ACKNOWLEDGED AND AGREED TO:**

By signing this Agreement, both agencies agree that they have read and agree to the contents therein.

**Flagler County Sheriff's Office**

**Florida Department of Military Affairs,  
Division of Florida State Guard**

By (Signature): \_\_\_\_\_  
By (Print): \_\_\_\_\_  
Title: Sheriff of FLAGLER County  
Date: \_\_\_\_\_

By (Signature): \_\_\_\_\_  
By (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Flagler County Board of County  
Commissioners**

By (Signature): \_\_\_\_\_  
By: Andrew S. Dance, Chair  
Date: \_\_\_\_\_

**Exhibit “A”**  
Lease Agreement

*See attached*