

**SHARED USE AGREEMENT  
BETWEEN  
THE SCHOOL BOARD OF LEE COUNTY, FLORIDA  
AND  
THE VILLAGE OF ESTERO**

**THIS AGREEMENT** (hereinafter “**Agreement**”) is made by and between The School Board of Lee County, Florida, a body corporate (hereinafter “**Board**”), 2855 Colonial Boulevard, Fort Myers, FL 33966, and the Village of Estero, a Florida municipal corporation (hereinafter “**Village**”), 9401 Corkscrew Palms Circle, Estero, Florida, 33928, which collectively are referred to herein as the Parties, as follows:

**WHEREAS**, Florida Statutes § 1001.42(4)(j) authorizes the Board to provide for cooperation with other agencies in joint projects; and

**WHEREAS**, Florida Statutes § 1013.101(1) provides that it is the policy of the state of Florida that district school boards allow for the shared use of their recreation facilities by members of the public to provide greater access to recreation and sports, by way of shared use agreements; and

**WHEREAS**, Florida Statutes § 1001.43(4) authorizes the Board to adopt policies providing for management of the physical campus and its environs, including, but not limited to, building and ground maintenance; fencing, landscaping, and other property improvements; site acquisition; new construction and renovation; and development of facilities management planning and priorities; and

**WHEREAS**, Florida Statutes § 163.01(4) and (5) authorize public agencies such as school boards and municipalities, through interlocal agreements, to jointly exercise powers or privileges which each may exercise separately, including the ownership, custody, operation or maintenance of real property; and

**WHEREAS**, Florida Statutes § 163.01(6) provides that an interlocal agreement between public agencies such as school board and municipalities may provide for one or more parties to the agreement to provide the services set forth in the agreement; and

**WHEREAS**, the Village is developing a recreation and entertainment hub on Village land proximate to the Estero High School campus which will, among other offerings, provide for pickleball courts for public use; and

**WHEREAS**, the Village has proposed to the Board that it would pay the lease compensation, and perform the improvements, management, and maintenance of a portion of the Estero High School campus delineated in the “Map of the Property” attached hereto as Exhibit “A” and incorporated herein by reference (the “**Recreational Complex Parcel**”); and

**WHEREAS**, the Village will, over several years, develop or re-develop and improve fields and courts on the Recreational Complex Parcel to provide, at a minimum, the number and type of fields and courts required by the Board to provide for the interscholastic athletic programs at Estero High School, as well as to provide enhanced recreational offerings to Village residents; and

**WHEREAS**, the Village will maintain and operate the facilities on the Recreational Complex Parcel and afford Estero High School interscholastic athletic programs priority of use, while in turn, the Board will allow residents to make use of the recreational amenities on the Recreational Complex Parcel when they are not being used for school athletic events, so long as the Village has a made Qualifying Investment on the portion of the Recreational Complex Parcel intended to be used by Village residents; and

**WHEREAS**, the Village's management and maintenance of the Recreational Complex Parcel would be at no cost to the Board, and the Village would pay all costs for maintenance, repair and replacement of the fields, courts, and all related infrastructure on the Recreational Complex Parcel; and

**WHEREAS**, this Agreement allows for shared use of the recreation facilities by members of the public to provide greater access to recreation opportunities, while also reducing the costs to the Board to provide interscholastic athletic programs at Estero High School; and

**WHEREAS**, to strengthen the collaboration between the Village and the Board, to create recreational opportunities for Village residents, and to create greater sporting and educational opportunities for students attending Estero High School; the Village and Board have agreed to enter into this Agreement; and

**WHEREAS**, both the Board and the Village's staff preliminarily find that it is in the best interests of the Board, Estero High School, and the residents, visitors and businesses of the Village, to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Parties hereto agree as follows:

#### **SECTION I: PURPOSE AND TERMS**

1. **Term**: The Parties agree that this Agreement, including all of its terms, covenants, conditions, and restrictions, shall continue in force and effect for a term congruent with the term of that certain Recreation Lease Agreement between the Village and the Board ("**Lease**").
2. **Definitions**: For clarity, capitalized terms not defined in this Agreement shall be attributed their definitions provided in the Lease. "**Facilities**" as used herein shall mean and be equivalent to "Shared Facilities" as such term is defined in the Lease.

#### **SECTION II: OPERATION AND USE OF THE FACILITIES**

1. **Shared Use**. The Village and the Board shall share the use of the Facilities located on the Recreational Complex Parcel (referred to as the "Property" in the Lease) subject to such terms, limitations and conditions set forth in this Agreement and the Lease, as applicable.
  - a. Until the Village completes the Qualifying Investment (as defined in the Lease) and delivers satisfactory evidence of such investment to the Board, the Board shall

have exclusive use of Recreational Complex Parcel and the facilities located thereon. After the Village completes the Qualifying Investment, the Village shall have the right to use the Facilities, which right is subject to the terms of this Agreement. Notwithstanding anything in this Agreement or the Lease to the contrary, Estero High School sports teams will be provided first priority use of the Facilities during their respective Florida High School Athletic Association (FHSAA) seasons. This includes both practices and games (Scheduled Activities). The District shall provide The Village practice and game schedules as early as possible but not later than sixty (60) days prior to the start of their first practice.

- b. In the event the District desires to hold an event requiring use of the Facilities outside the scheduled activities, The District agrees to notify the Village of the intended date and time of such special event as early as possible but no later than sixty (60) days prior to the date of the event, and the Village agrees to not unreasonably withhold, delay or condition their approval. In the event the Village is unable to accommodate the special event, The Village will notify the District within thirty (30) days of the request.
  - c. It is the overarching intent of the parties to always use their respective best efforts to accommodate the other party's needs, and both parties agree to not unreasonably limit the other party's use of the Facilities.
2. Hours of Operation; Opening and Closing of Facilities. Each Party shall be responsible for opening and closing the Facilities during the periods of their respective control of the applicable Facilities, so that the Facilities remain secured at all times. As security requirements change or are mandated by State or Federal requirements, the safety and security obligations of the Parties will change in order to comply and be in alignment with such updated safety and security requirements and mandates.
  3. Final Site Plan. Facilities shall be of equal or better quality than the existing facilities.
  4. Construction Plan and Obligations. The Village shall, at Village's sole cost and expense and to the Board's or Board's staff's reasonable satisfaction, which satisfaction may not be unreasonably withheld, conditioned, or delayed, complete the following (collectively, the "**Village Improvement Obligations**"):
    - a. Over the first five (5) years of this agreement the Village will invest not less than TEN MILLION AND 00/100 DOLLARS (\$10,000,00.00) into facility improvements to include but not limited to installing artificial turf on the stadium field, renovating the tennis courts and renovating at least two of the basketball courts.
    - b. The Village will provide updates to the Board as necessary to garner the Board's approval of all facilities intended to meet the Minimum Facilities described below;
    - c. District will have access to at least the following facilities for Estero High School Sports during FHSAA seasons ("**Minimum Facilities**"). Construction activities will be phased in order to maintain field access during FHSAA seasons.

- i. 1 Long Field (football, soccer, lacrosse)
    - ii. 1 Practice field (football, soccer, lacrosse)
    - iii. 1 Baseball Field
    - iv. 1 Softball Field
    - v. 6 Tennis Courts
    - vi. 2 Outdoor Basketball Courts
  - d. Water Management to be completed as needed to accommodate each phase of facility improvements.
5. In addition to the above improvement obligations with respect to the Recreational Complex Parcel, the Village shall have the right to construct, either directly or through partnering with one or more third parties, additional recreational amenities which the Village, in its judgment determines are desirable to provide a broad array of recreational opportunities for Village residents. The Board will not be required to expend any of its resources for the construction of any such additional recreational amenities.
6. The parties acknowledge and agree that the below represent some of the parties' mutual aspirations and goals with respect the Village Improvement Obligations:
  - a. The football field stadium and practice field will be upgraded to an artificial turf;
  - b. Space will be provided for field events outside the stadium field;
  - c. The spectator stands and/or seating for the soccer fields, and tennis courts, will be enhanced;
  - d. The tennis courts will be resurfaced and restriped;
  - e. The basketball courts may be reconstructed and/or relocated (with at least two remaining)
  - f. The baseball and softball fields will be upgraded;
  - g. Space will be provided for the JROTC facilities; and
  - h. Walking paths will be provided. The paths will be designed to accommodate cross country events.
7. In addition, the parties acknowledge and agree that the following are required with respect to any work performed on any facilities on the Recreational Complex Parcel:
  - a. The layouts and characteristics of the courts and fields must comply with the standards required by the Florida High School Athletic Association and all applicable laws, ordinances, regulations, and rules, including, without limitation, the Americans With Disabilities Act, the State Requirements for Educational

Facilities, and the Board policies and rules with respect to access and security, as such policies and rules may change from time to time.

- b. The Village will coordinate with the District on the planning, design, and construction efforts related to facility improvements. The Village will update and revise plans as needed to comply with the District's sports and security needs.
8. Prior to commencing any construction or development on the Recreational Complex Parcel, Village must ensure a secure fence is in place to ensure the safety of the school and its occupants, and the Village agrees, on behalf of itself, its agents, employees, vendors, and contractors, not to commit or omit any action that would jeopardize the safety of the school, its occupants or the Recreational Complex Parcel or Board. Once the fence is installed by the Village, the Village shall maintain, repair, and replace the fence as necessary.
9. Further, Village agrees to provide the Board with a minimum of thirty (30) days' advance written notice prior to undertaking any work that may adversely affect the ability of school students or faculty to access the Recreational Complex Parcel.
10. The Village agrees to perform all construction and development work in a diligent manner, consistent with construction and development practices in Lee County, Florida, consistent with the Village Code of Ordinances (and, if and where applicable, State Requirements for Educational Facilities ("SREF"), the Village of Estero Land Development Code, Florida Building Code, and all other authorities having jurisdiction), and free of liens.
11. In the event the Village fails to timely and satisfactorily complete the Village Improvement Obligations, the Board may, upon written notice to the Village, undertake to perform the Village Improvement Obligations and bill the Village for all costs incurred by the Board in the performance of such work. The Village will reimburse the foregoing costs to the Board within thirty (30) days of the Board providing an invoice to the Village for such services, and Village agrees to pay TEN PERCENT AND 00/100 (10%) simple interest per annum on all untimely paid invoices, which interest will accrue from the due date until the invoice is paid. The terms of this Section 10 shall survive the expiration or earlier termination of this Agreement.

### **SECTION III: MAINTENANCE, REPAIR, IMPROVEMENT AND OPERATION**

1. The Village shall, at its sole cost and expense, manage, maintain, repair, and replace, as necessary, the Facilities (including, without limitation, all related infrastructure, landscaping, and parking areas) in a clean and safe condition, in compliance with all applicable laws and governmental regulations applicable to the Facilities, and in accordance with this Agreement. The parties contemplate that obligations of the Village with respect to a Facility shall include, without limitation:
  - a. Enforcing site access rules and procedures after developing the same in cooperation with the Board;

- b. Managing and maintaining the landscaping and irrigation;
  - c. Contracting for, supervising and otherwise managing third-party vendors, operators or service providers;
  - d. Ensuring satisfactory provision of water, sewer, electricity, solid waste, and any other necessary utilities to the Facility;
2. The Village's maintenance, repair, and replacement obligations as provided in this Agreement shall include, but not be limited to: (i) repair or replacement of any structure, surface, system, equipment, improvement or portion(s) thereof, which have excessive wear, become structurally unstable, become damaged or in disrepair, or otherwise become unsafe, and (ii) cleaning and repainting of equipment, structures and other applicable equipment. The Village will ensure all applicable portions of the Facilities meet *U.S. Consumer Product Safety Commission's (CPSC) and ADA guidelines* at all times. Notwithstanding the foregoing in this Article 3, in the event a Party, or anyone acting under the control or direction of such Party, by intentional misconduct or gross negligence, causes or permits damage to occur to the Facilities, then such party shall, within thirty (30) days of receipt of notice of such occurrence, promptly repair such damage, at its sole cost and expense; however, if the repair requires a longer time to complete, the repairing party shall not be in default for failure to complete the repair within said thirty day period as long as the said party has commenced the repair process within seven (7) days of said notice and diligently prosecutes the cure to completion.
3. The Village shall inspect the Facilities on a routine basis in order to assess the need for maintenance and repairs in connection with the obligations herein. Each Party shall have the right to inspect all of the Facilities from time to time, as it deems necessary, to confirm the Facilities are being maintained in the condition as required in this Agreement. In the event District becomes aware that any of the Facilities has fallen in disrepair, is unsafe, or any such other condition requiring maintenance or repair, the District shall promptly notify the Village of same. In the event The Village fails to timely and satisfactorily complete its obligations in this Article 3, the District may, upon written notice to the Village, undertake to perform those obligations and bill the Village all actual costs incurred in the performance of such work for The Villages' default on its obligations. The Village will reimburse the foregoing costs to the District within thirty (30) days of the District providing to the Village an invoice for such services.
4. Any user fees or customer charges the Village may establish for utilization of the facilities on the Recreational Complex Parcel will not be imposed on the Board or Estero High School students during such times as the Board, Estero High School students or their guests or invitees are using the Recreational Complex Parcel for Estero High School interscholastic athletic activities.
5. During all such times that the Board is using the Recreational Complex Parcel, the Board is required to ensure that Board staff and volunteers are present to supervise and oversee such events, and to ensure all Board safety and conduct rules are followed. At all other times, with respect to Facilities, the Village is required to ensure that Village staff, Village

Contractor, and volunteers are present to supervise and oversee the use of the Facilities and to ensure all applicable safety and conduct rules are followed.

#### **SECTION IV: DEFAULT**

1. If either Party fails to materially fulfill its obligations under this Agreement that Party will be considered to be in default. The other Party to the Agreement shall provide written notice of the default and an opportunity to cure the default within thirty (30) days of receipt of said notice. If the defaulting Party fails to cure the default within said time period, the other Party may terminate this Agreement for cause by providing written notice of termination. Failure of either Party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Village nor the Board is deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party.

#### **SECTION V: NOTICE:**

1. All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person and signed for or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

**For the Village:** Village of Estero  
Attn: Village Manager  
9401 Corkscrew Palms Circle  
Estero, Florida 33928

With Copy to:  
Village of Estero  
Attn: Village Attorney  
9401 Corkscrew Palms Circle  
Estero, Florida 33928

**For the Board:** Operations Department  
Attn: Director of Planning  
2855 Colonial Boulevard  
Fort Myers, Florida 33966

With Copy to:  
Office of Superintendent  
Superintendent of Schools  
2855 Colonial Boulevard  
Fort Myers, Florida 33966

With Copy to:

Office of Legal Services  
School Board Attorney and  
General Counsel  
2855 Colonial Boulevard  
Fort Myers, Florida 33966

The address to which any notice or demand may be given to either Party may be changed by written notice.

**SECTION V: [Reserved.]**

**SECTION VI: MISCELLANEOUS:**

1. The Parties represent and warrant that they have full authority to enter into and sign this Agreement. This Agreement and the Lease contain the entire agreement between the Village and Board with the transaction contemplated by such instruments, notwithstanding any verbal understanding, statements or prior writings or agreements to the contrary. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction located in Lee County, Florida; furthermore, **the Parties irrevocably waive their right to trial by jury in any legal proceeding arising under this Agreement.** No modification or amendment of this Agreement shall be valid and binding on the Board or the Village unless it is in writing and executed by or on behalf of the Board and the Village. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto.

**SECTION VII: DISPUTE RESOLUTION**

1. As a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing Party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.



**SECTION VIII: GOVERNING LAW; COMPLIANCE WITH LAWS; VENUE**

1. This Agreement will be interpreted and enforced in accordance with Florida law. The parties agree that they shall comply with all applicable federal, state, and local laws, ordinances, and codes, including but not limited to the Florida Building Code and the Americans with Disabilities Act. Venue for any action brought hereunder shall be proper exclusively in Lee County, Florida.

**SECTION IX: [Reserved.]**

**SECTION X: ASSIGNMENT**

1. No assignment, delegation, transfer, or novation of this Agreement or part thereof, shall be made by either Party unless approved by both the Board and the Village.

**SECTION XI: MODIFICATIONS**

1. This Agreement may be modified or amended only by mutual written consent of the Parties; provided, however, scheduling and uses of the Facilities by the District will be regularly changing and amended and are not considered amendments to this Agreement but simple and ongoing calendars that will be maintained by Staff of both Parties, and as such, do not require a mutually signed writing to be effective and enforceable.

**SECTION XI: NON-DISCRIMINATION**

1. The Parties shall not unlawfully discriminate against any individual on the basis of his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.

**SECTION XII: RELATIONSHIP TO THE PARTIES**

1. The Parties hereto acknowledge that their relationship is that of independent contractors. No employee of either Party shall be deemed an employee of the other Party. Nothing contained herein shall be construed to create a partnership or joint venture between the Parties.

**SECTION XIII: NO THIRD-PARTY BENEFICIARIES**

1. This Agreement and the provisions hereof are for the exclusive benefit of the Parties hereto and their affiliates and not for the benefit of any third person, nor shall this Agreement be deemed to confer or have conferred any rights, express or implied, upon any other third person.

2. All parties are in mutual agreement with the terms of this Agreement as evidenced by the signatures below. This Agreement will be effective upon authorized signature of each party's representative.
3. This Agreement will inure to the benefit of and be binding upon the Board and Village and their respective legal representatives, successors, and permitted assigns.

#### **SECTION XIV: SECTION AND PARAGRAPH HEADINGS**

1. The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.

#### **SECTION XVI: FORCE MAJEURE**

1. Non-performance by either Party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, pandemics, third party governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("**Force Majeure**"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform.

#### **SECTION XVII: INDEMNIFICATION**

1. Village shall indemnify and save harmless Board from and against any and all claims, suits, actions, damages, and/or causes of action arising during the term of this Agreement for any personal injury, loss of life and/or damage to property sustained in or about the Recreational Complex Parcel or the appurtenances thereof and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claims, investigations thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgements, or decrees which may be entered in respect thereto, except resulting directly from any Lessor Uses (as defined in the Lease). Village is expressly not required to indemnify or defend Board for any claims or losses resulting directly from any Lessor Uses, unless such claim or loss is a result of Village's negligence or intentional act.

Notwithstanding the indemnification of the Parties by each other, neither Party waives its respective limitations on liability as to all other third parties provided for in Florida Statutes § 768.28.

#### **SECTION XVIII: PUBLIC RECORDS**

1. Both Parties are subject to Florida's Public Records Act, Chapter 119, Florida Statutes. Each party shall keep and maintain public records in connection with this agreement and shall ensure that public records that are exempt or confidential shall not be disclosed except as authorized by law. Upon request from the respective party's

custodian of records, the other party shall provide the requested records or allow for inspection within a reasonable time as provided by law.

**For the Village:**

**IF THE SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SCHOOL BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-221-5035, [records@estero-fl.gov](mailto:records@estero-fl.gov) or by mail Village of Estero – Village Clerk, 9401 Corkscrew Palms Circle, Estero, FL 33928**

**For the Board:**

**IF VILLAGE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VILLAGE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-461-8420, [PublicRecords@leeschools.net](mailto:PublicRecords@leeschools.net) OR BY MAIL: Lee County School Board – Public Information Coordinator, 2855 Colonial Blvd., Fort Myers, FL 33966.**

**SECTION XVIII: ENTIRE AGREEMENT**

1. This Agreement constitutes the entire agreement between the Board and the Village concerning the purposes outlined herein and shall supersede and control any or all prior Agreements or understandings, either written or oral, relating to the matters herein.

**SECTION XIX: EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**[Signatures appear on following pages.]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their authorized representatives on the respective dates it is adopted by their respective governing boards.

\_\_\_\_\_  
Jon McLain  
Mayor

\_\_\_\_\_  
Samuel Fisher  
Board Chair

**Attest:**

**Attest:**

\_\_\_\_\_  
Carol Sacco  
Village Clerk

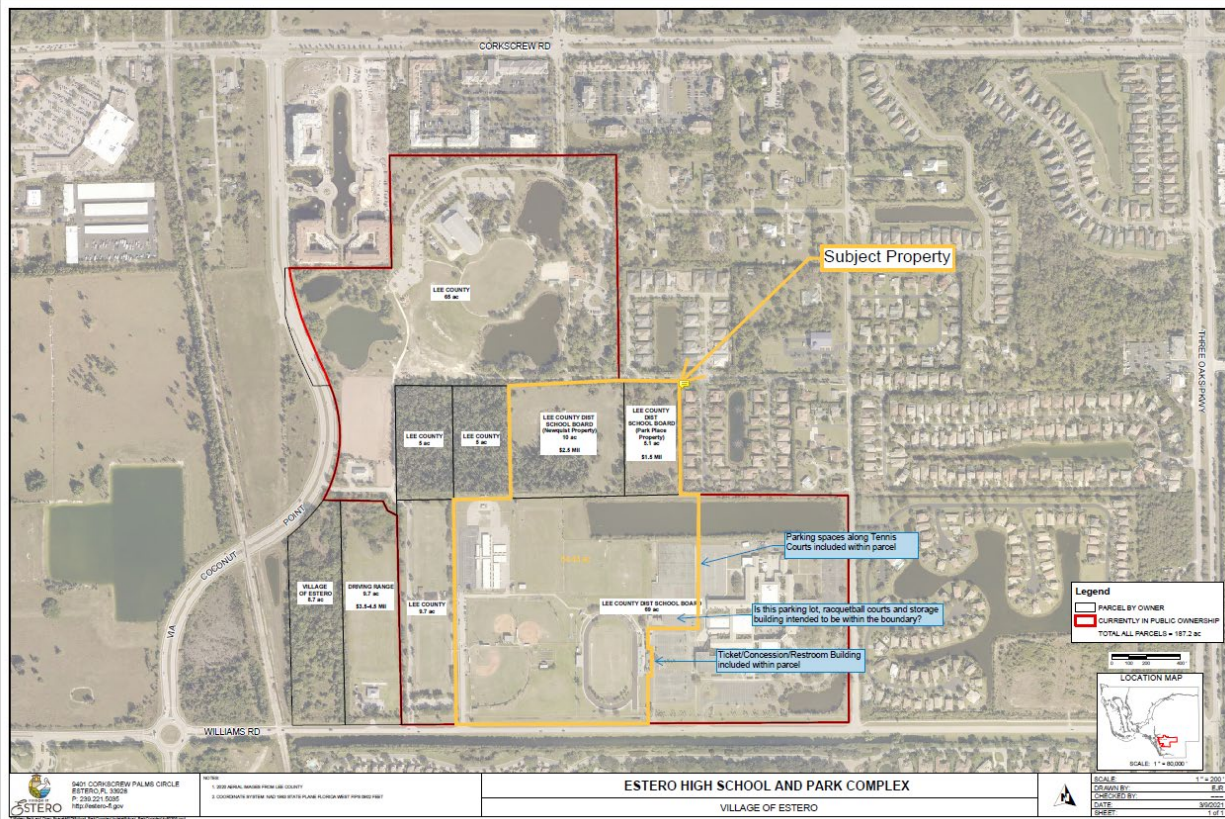
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Christopher S. Bernier, Ed.D.,  
Superintendent of Schools

Approved as to Form and Legal Sufficiency  
As to The School Board of Lee County,  
Florida, Only:

\_\_\_\_\_  
Kathy Dupuy-Bruno, Esq.  
School Board Attorney and General Counsel

# EXHIBIT "X"- MAP OF AREA

*"Map of area of Estero HS to be leased by the Village"  
 (current 43 Acres potentially to expand to 54 to include Football/track and Tennis)*



## EXHIBIT “B” USE SCHEDULE

*\*To be completed. Only outline of some aspects included.\**

The Village may use the Facilities during that period that begins thirty minutes before the school day commences and ending 30 minutes after the school day ends (“**School Hours**”); provided, however, with respect to the track and the football fields, which may only be used during School Hours by the Village with the prior written consent of the Estero High School principal or the Estero High School athletic director, which consent may not be unreasonably withheld, conditioned, or delayed.

**EXHIBIT "X" FINAL SITE PLAN**