

City of South Daytona

Parks and Recreation

504 Big Tree Road • South Daytona, FL 32119 • 386/322-3070



MEMORANDUM

To: James L. Gillis, Jr., City Manager

From: Amy Zengotita, CPRP, Parks and Recreation Director

Re: Consideration of approving a Use Agreement with Volusia County Parks, Recreation and Culture Department Summer Camp Program for use of James Street Park Youth Activity Building for the operation of Winter, Spring and Summer Camp for five years with the agreement terminating on February 28, 2028.

Date: January 13, 2023

In April 2022, the City of South Daytona partnered with Volusia County Parks, Recreation and Culture Division for their extensive, Summer Camp Program.

The Volusia County Summer Camp program successfully operated in the Summer of 2022 from our James Street Youth Activity Building for students ages five through twelve from 7:30am to 5:30pm Monday through Friday and offers two to three field trips per week. Volusia County also provided scholarships through their Community Services Division for our residents to attend the program.

The team from Volusia County Parks, Recreation and Culture Division has requested to expand the program at the James Street Youth Activity Building for Winter, Spring and Summer Camp Programs as well as to agree to a long-term partnership.

Since South Daytona had historically offered a Spring Break and Summer Camp program, this partnership proved to be a benefit to our residents and students with enhanced field trips and learning opportunities, as well as the scholarship opportunities.

The Summer Camp program offered by Volusia County is virtually identical to the program staffed by South Daytona in the past. The cost to our residents would be the same as well as the hours of operation. Similar field trips have been scheduled to help give this program a South Daytona feel.

Staff proposes the Use Agreement for the operation of Winter, Spring and Summer Camp have a duration of five years with the agreement terminating on February 28, 2028. The Winter Camp Program will be scheduled during the Volusia County Schools Winter Break in late December through early January. The Spring Camp Program will be scheduled during Volusia County Schools Spring Break in March or April. The Summer Camp Program will be scheduled during Volusia County Schools Summer Break between the months of May and September.

Attached to this memorandum is the proposed agreement between the City and Volusia County for the implementation of a Summer Camp program. Staff and our City Attorney have reviewed and approved of the proposed agreement as written. Staff is recommending that the City Council approve the Use Agreement with Volusia County so that they may utilize the James Street Park Youth Activity Building for the operation of Winter, Spring and Summer Camp for five years with the agreement terminating on February 28, 2028.

**USE AGREEMENT BY AND BETWEEN
THE CITY OF SOUTH DAYTONA, FLORIDA
AND THE COUNTY OF VOLUSIA, FLORIDA
FOR THE VOLUSIA COUNTY WINTER, SPRING AND SUMMER CAMP PROGRAMS**

THIS AGREEMENT (hereinafter the “Agreement”) is made and entered into this 14th day of February, 2023, by and between the City of South Daytona, Florida, a Florida municipality, (hereinafter referred to as the “City”), whose mailing address is 1672 S. Ridgewood Avenue, South Daytona, Florida 32119, and the County of Volusia, Florida, a political subdivision of the State of Florida (hereinafter referred to as “User”) whose address is 123 W. Indiana Ave, DeLand, FL 32720. The City and User may be collectively referenced herein as the “Parties.”

WITNESSETH:

WHEREAS, the City owns James Street Park Youth Activity Building, located at 1700 James Street, South Daytona, Florida.

WHEREAS, the City is agreeable to allowing User use of the Youth Activity Building owned by the City of South Daytona from for Winter, Spring and Summer Camp Programs from March 1, 2023 until February 28, 2028; and

WHEREAS, it is desirable that the respective duties and responsibilities of the respective parties be set forth in a written agreement; and

WHEREAS, both parties hereto are in agreement that the services and instruction rendered by User and the land provided by the City are for the good and betterment of the community and in the best interest of the public, subject to certain terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises made herein, the City and User agree as follows:

1. **Consideration.** The City does hereby agree to the use of certain City facilities by User as described herein, to wit: James Street Park, Youth Activity Building located at 1700 James Street, South Daytona, Florida (hereinafter referred to as the “Facility”).
2. **License.** The City hereby grants User the use of the Facility (as described above), subject to the terms and conditions of this Agreement, for the purpose of running Winter, Spring and Summer Camp Programs from March 1, 2023 to February 28, 2028.

The Winter Camp Program will be scheduled during the Volusia County Schools Winter Break in late December through early January. The Spring Camp Program will be scheduled during Volusia County Schools Spring Break in March or April. The Summer Camp Program will be scheduled during Volusia County Schools Summer Break between the months of May and September.

3. **Condition of City Property.** During the entire term of this Agreement, the parties shall maintain the building in substantially the same condition as it was in on the Effective Date, with the exception of normal wear and tear. No improvements or alterations are permitted without the prior written approval by the City.
4. **Premises.** User will have use of the Facility during the term of the Agreement. The City shall inspect the facility regularly and the City's determination as to the condition of the Facility will be final. User also agrees to enforce the City rules posted at the facility.
5. **Interior.** User shall maintain the interior of the Youth Activity Building in clean and sanitary condition at all times.
6. **The City agrees to:**
 - a. Maintenance of water fountains.
 - b. Payment of all utilities. The City reserves the right to issue guidelines to User and others concerning the usage of lighted areas.
 - c. Provide trash receptacles and trash bags.
 - d. Provide paper towels and toilet paper.
7. **User agrees to:**
 - a. Coordinate User activities and provide all staff or volunteers essential for operating such a program. User shall be responsible to do proper background checks for all staff and volunteers. The background check will include any criminal violations. No person shall be allowed to provide any services to User if that person has a criminal conviction for a felony, has a pending felony charge or has been designated a sex offender or sexual predator in any state.
 - b. Coordinate activities with the City if the City needs use of the Facility.
 - c. Maintain the grounds outside and inside of the playing area free of paper and debris accruing from the operation of User activities. This includes the playground, splash pad, pavilions and parking areas.
 - d. Maintain facilities in accordance with specifications established by the State Sanitary Code but at a minimum, daily maintenance must include:
 - i. Remove trash from the building at the close of each day into provided dumpster.
 - ii. Clean Bathroom Facilities:
 - Sinks, toilets, urinals, counters, walls, stalls, dispensers, mirrors.
 - iii. Wipe down all hard surfaces (countertops, tables, chairs).
 - iv. Restock Bathroom Facilities.
 - v. Sweep floors.

- vi. Turn-off all lights.
- vii. Secure facility.
- e. Provide all equipment associated for said activities.
- f. Obtain the written prior approval of the City before physical improvements or additions are made to any facilities. Unapproved contested work done to the facilities will require restoration back to original condition by User at their expense. All physical or capital improvements will belong to the City.
- g. Report damage, vandalism, problems, and safety hazards to the City immediately by contacting the Parks and Recreation Director at (386) 322-3070.
- h. Provide the name and contact information for one designated individual to act as the User representative and liaison between User and the City. If User decides to change the designated representative at any time, it shall notify the City of same in writing within three (3) days of such change in designation.
- i. User agrees to reasonable use of the facility's utilities including water and electric.
- j. Report all accidents or injuries to participants, staff, volunteers or visitors within 48 hours, by telephone and with a follow up written report. Reports shall be reported to the Parks and Recreation Director by calling (386) 322-3070. Written reports can be hand delivered to Piggotte Community Center, 504 Big Tree, South Daytona, 32119.
- k. Include the following statement in the registration application:

"The program that you are participating in is being operated by the Volusia County Parks, Recreation and Culture Department, a legal entity separate and independent of the City of South Daytona. This Summer Camp Program is not supervised nor sponsored by the City of South Daytona. All questions and concerns about the program should be directed to the Volusia County Parks, Recreation and Culture Department."
- l. The City will issue any necessary codes/combinations and/or keys to be used by the User Director/Representative. These items are not to be duplicated or shared outside of User needs.
- m. User is responsible for the security of the facility. The City is not responsible for the loss or theft from the facility of any property belonging to the User.
- 8. Each Party shall be responsible for its sole negligence, breach of contract, or breach of this Use Agreement, subject to the limitations in § 768.28, Florida Statutes.
- 9. **Term and Termination.** This Agreement will begin on March 1, 2023 and will continue until February 28, 2028. Either party can terminate this Agreement with or without cause.

10. **Severability.** If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.
11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Agreement, and that it has the legal authority to enter into this Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Agreement and bind the respective parties herein.
12. **Entire Agreement/Modification.** This Agreement, together with the exhibit(s), constitutes the entire integrated Agreement between the City and User and supersedes all prior written or oral understandings in connection therewith. This Agreement, and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the parties hereto to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral. This Agreement may only be amended, supplemented or modified by a formal written amendment.
13. **Governing law, Venue and Interpretation.** This Agreement is to be governed by the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida. This Agreement is the result of bona fide arm's length negotiations between the City and User, and all parties have contributed substantially and materially to the preparation of the Agreement. Accordingly, this Agreement shall not be construed or interpreted more strictly against either party as the drafter.
14. **Waiver.** The failure of the City to insist in any instance upon the strict performance of any provision of this Agreement, or to exercise any right or privilege granted to the City of South Daytona hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.
15. **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
16. **Assignment.** The User shall not make any assignment or transfer of any of its rights, obligations, or duties to a third party without the express written permission of the City.

IN WITNESS WHEREOF, the City of South Daytona and Volusia County have executed this instrument for the purpose herein expressed.

City of South Daytona:

County of Volusia:

James L. Gillis, Jr., City Manager

George Recktenwald, County Manager

Approved as to form and legality for use
and reliance by the City of South Daytona, Florida

By: _____
Wade C. Vose
City Attorney

Approved as to form for the County of Volusia, Florida

By: _____
Heather J. Wallace
Deputy County Attorney