

USE AGREEMENT: THE MUSIC SUITE AT NORTH PORT HIGH SCHOOL
ESTABLISHING REQUIREMENTS FOR MUSIC SUITE USER GROUPS

THIS USE AGREEMENT is made this _____ day of _____, 2008, by and between the School Board of Sarasota County, Florida (the "School Board"), and the City of North Port, a municipal corporation under the laws of the State of Florida (the "City").

WHEREAS, the School Board and the City entered into an Interlocal Agreement to jointly fund the construction of a Performing Arts Theater, since renamed the North Port Performing Arts Center, on the North Port High School campus; and

WHEREAS, in fulfillment of other terms of the Interlocal Agreement, the City paid the School Board for construction of the six-thousand (6,000) square foot Music Suite for the exclusive use of the City;

WHEREAS, the Interlocal Agreement required the parties to enter into a use agreement for use of the Music Suite; and

WHEREAS, the parties to the Agreement wish to clarify terms of use for all present and potential future Music Suite user groups in order to ensure that it is used for the purpose of continued promotion of the performing arts for adults and students in the North Port community.

NOW, THEREFORE, the School Board and the City do mutually covenant and agree as follows:

1. Use of the Music Suite by any performing arts organization is not a right, but a privilege, and nothing in this Agreement shall be construed to grant use of the Music Suite in perpetuity to any User Group. "User Group" is defined as any performing arts organization that has entered into an agreement with the City to use the Music Suite.
2. The Music Suite at the North Port Performing Arts Center will be utilized by each User Group at the discretion of the City of North Port.
3. The City may adopt rules and regulations as may be necessary for the maintenance and safe operation and use of the Music Suite. Failure to follow the rules and regulations shall be cause for termination of use by a User Group.
4. User Groups will maintain appropriate liability insurance which names the City of North Port and the School Board of Sarasota County as additional insureds.
5. User Groups are responsible for all utility fees and appropriate cleaning of the Music Suite.
6. Each User Group shall enter into an agreement with the City for use of the facility and payment of any expenses.

7. The City and each User Group shall establish a mutually agreeable meeting date and time in the second quarter of each year to publicly discuss User Group's activities during the prior year. Each User Group shall discuss its actual usage of the facility during the previous year, which shall include at a minimum the following information:
 - (a) The User Group's annual usage of the facility on a month-by-month basis, including its share of the total scheduled usage of the facility (i.e., its share of the total amount of time used by all user groups);
 - (b) The User Group's public concert schedule and ticket fees;
 - (c) Average audience attendance per scheduled performance; and
 - (d) Total active membership.
 - (e) At its option, each User Group may also discuss with the City suggestions and recommendations for improving usage of the facility.
8. At its sole discretion and after duly considering all pertinent information, particularly including User Groups' reports as described above, the City may exercise its option to authorize the continued use of the Music Suite by a User Group for an additional 12-month period.
9. At its sole discretion, the City may terminate use of the facility by a User Group with six months prior notice if it determines that the User Group is no longer viable or functional by reason of limited membership and/or benefit to the public, or has violated any condition of use.
10. At its sole discretion, the City may terminate use of the facility by a User Group on shorter notice in the event that a User Group commits a serious offense, such as causing damage to the Music Suite. The City intends to execute a User Agreement with each User Group, which document shall identify in greater detail the circumstances under which the City may exercise its right of early termination.
11. In the event that use of the facility by a User Group should terminate for any reason, a vacancy may be declared by the City. North Port community-based, not-for-profit, open-to-the-public performing arts organizations may then petition the City for sharing use of the facility with remaining facility users. The City shall select a successor organization after considering use of the facility by remaining User Groups and consulting with the North Port High School Principal. In the event that two or more equally qualified potential users indicate an interest, in writing, in filling the declared vacancy, the City shall select the successor organization based on, but not necessarily limited to, the following criteria:
 - (a) Benefit to the public at large;
 - (b) Organization's agreement to abide by these provisions;

- (c) Total active membership of the organization;
 - (d) Documentation of the organization's non-profit status;
 - (e) Organization's willingness to avoid scheduling and use conflicts with other User Groups.
12. The parties stipulate that publicly-owned and controlled facilities such as the Music Suite best serve the public when they are utilized near their capacity. The parties further stipulate that off-season "downtime" and other occasions may arise that would allow nonconflicting use of the Music Suite by a North Port community-based, not-for-profit, open-to-the-public performing arts organization other than those User Groups who regularly use the facility and store their property within it. Should such opportunities occur, the parties agree to coordinate use of the facility with one another and the User Groups in advance of such use.
 13. In the event that a User Group objects to any decision by the parties to allow another group to use the facility in the manner described in Paragraph 12, above, the User Group's chosen representative(s) may appeal the decision to the Joint Management Advisory Board. If the matter still remains unresolved, the User Group may appeal to the parties, whose decision shall be final and binding.
 14. An officially designated agent of the City of North Port may inspect the Music Suite premises at any time that is mutually agreeable to the administration of North Port High School.
 15. When the facility is not scheduled for use and with sufficient prior notification, the North Port City Manager may grant a request by the School Board for use of the Music Suite.
 16. It is recognized that this Use Agreement is part of the Interlocal Agreement entered into by the School Board and the City dated October 20, 1998. Notwithstanding any provision of this Use Agreement, the City shall continue to be bound by paragraphs 10 and 11 of the Interlocal Agreement.
 17. This Agreement shall be controlled by Florida law.
 18. This agreement may only be amended in a writing signed by both parties.

19. Term and Effective Date: This Agreement shall become effective upon its execution by both parties and upon filing with the Administrative Assistant to the School Board Members and the City Clerk. The term of this Agreement shall be for thirty (30) years from the effective date.

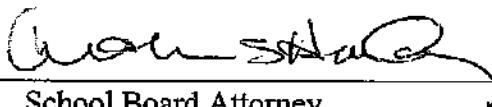
SCHOOL BOARD OF SARASOTA
COUNTY, FLORIDA

By: _____
Caroline Zucker, Board Chair

ATTEST:
Nina Lane, Administrative
Assistant to the School Board Members

By: _____
Nina Lane

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By:  12-18-08
School Board Attorney

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: _____
Helen Raimbeau, MMC, City Clerk

By: _____
Vanessa Carusone, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Robert K. Robinson, City Attorney