

CITY OF VINELAND, NJ

ORDINANCE NO. 2023- 33

ORDINANCE AUTHORIZING THE EXECUTION OF A
LEASE AGREEMENT BY AND BETWEEN THE
VINELAND BOARD OF EDUCATION AND THE CITY OF
VINELAND FOR THE USE OF SPORTS FIELDS IN
ACCORDANCE WITH N.J.S.A. 40A:12-10.1.

WHEREAS, the Vineland Board of Education (Board) owns certain real property and facilities within the School District, known as Veterans Memorial Middle School (Premises), which has located thereon, several sports fields utilized for recreation activities; and

WHEREAS, the City of Vineland and the Recreation Commission wish to utilize the sports fields on the Premises for youth sports activities, such as softball and baseball, during such times as the school is not in session, more particularly, after 5 pm, weekends and summer and the Board is willing to accommodate the Vineland youth; and

WHEREAS, the parties wish to set forth the terms and conditions of a lease agreement so as to protect the interests of both parties while accommodating the many children and young adults who wish to partake in sports activities, all in the best interest of the Board and City.

WHEREAS, N.J.S.A. 40A:12-10.1 permits a Board of Education and a municipality to enter into such agreements to provide for youth activities.

WHEREAS, the Board has adopted a Resolution authorizing the execution of a lease agreement in the form and substance as attached hereto and made a part hereof.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute a Lease Agreement leasing certain sports fields from the Board of Education for a period of 5 years commencing March 1, 2023 and ending February 28, 2028 in the form and substance as attached hereto and made a part hereof.

This Ordinance shall take effect upon adoption and publication according to law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

LEASE AGREEMENT

THIS AGREEMENT is made by and between **Vineland Board of Education**, 61 W Landis Avenue, Vineland, New Jersey, hereinafter referred to as “the Board” and the **City of Vineland**, 640 E. Wood Street, Vineland, New Jersey, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the Board owns certain property and facilities within the District, known as Veterans Memorial Middle School, hereinafter known as “Premises.”

WHEREAS, the City desires to lease from the Board, and the Board desires to lease to the City, a portion of the Premises in accordance with the conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Board and the City agree as follows:

1. LEASE OF LEASED AREA. The Board hereby grants to the City the non-assignable right to use of a part of the Premises, as described herein, (the “Leased Area”), together with storage sheds, bleachers and a storage trailer and the field portions of the Board’s property known as Veteran’s Memorial Middle School located at 424 S. Main Road, Vineland, New Jersey, as more particularly depicted on the plan attached as Schedule A and made a part hereof. For purposes of this Agreement, the City shall include the Vineland Recreation Commission.

2. USE. The Leased Area is to be used solely for the purpose of providing for City sanctioned sports and recreational activities through the Recreation Commission. It is intended and expected that the City shall host and conduct a multifaceted and expansive program of such activities, and engage in improvements to the Leased Area as shall best accommodate the City’s programs. The City anticipates, with the cooperation of the Board, as a goal of the City’s intent to engage in facility improvements, constructing eight (8) dug-outs, two such facilities to be placed with each of four designated baseball fields located on the Premises

The uses shall be conducted by the City in a safe and supervised manner and in accordance with this Agreement. City has inspected the Leased Area, together with the sheds, bleachers and storage trailer, and acknowledges that the Leased Area is in proper condition for its intended use. The Board represents it has no knowledge of any conditions of the Leased Area that might otherwise render the Leased Area unsuitable for the subject intended use. Should either party become aware of any such conditions, it will immediately inform the other so that it may be remedied by the responsible party.

3. TERM.

a. The term of this Agreement (the "Lease Term") shall begin on March 1, 2023 and terminate on the expiration of the fifth year thereafter.

b. The City shall be permitted exclusive access at 5:00 p.m. each weekday when school is in session and otherwise at any time during weekends and during those periods of the year when school is not in session. At all other times, the Board shall have exclusive access for use by students and staff for recreational purposes, which shall include their use of all bleachers, dugouts and other improvements.

4. CONDITIONS OF USE AND OCCUPANCY. The City's use and occupancy of the Leased Area shall be subject to the following conditions:

a. The City shall comply with all reasonable conditions imposed by the Board upon the City's use and occupancy of the Leased Area, including the requirement that no exits be locked or blocked so as to impede free passage while the Leased Area is occupied.

b. Any deliveries to the Leased Area shall be scheduled so as not to hinder or to obstruct the activities of the Board or any other users, and likewise, such activities of the Board in and around the Leased Area shall not hinder, obstruct, or interfere with the City's sports and recreational activities permitted by this agreement.

c. The Board's employees or agents shall have a right of access to the Leased Area during the Lease Term to conduct reasonable inspections or to make any necessary repairs.

d. The City will maintain the Leased Area including grass cutting, landscaping and facility/equipment maintenance and facility improvements as may be deemed necessary by the City, such facility improvements to be subject to Board approval, which approval shall not be unreasonably withheld.

e. In the event that the City desires to install lighting and/or irrigation, the City must first obtain Board approval, which approval shall not be unreasonably delayed or withheld. Further, if any approved lighting and/or irrigation is installed, the City shall be responsible for maintenance and for all associated utility costs.

f. The City shall adhere to the Concussion Observation Protocol that is maintained by the City in connection with its athletic/sporting events and activities. That protocol, to be observed, on the field, by adult sports/recreational activity leadership is essentially as follows:

Do Not Play Games With Concussion.

Know What To Look For:

- Confused
- Forgets Instructions
- Answers Slowly
- Loses Consciousness
- Blurred Or Double Vision
- Appears Dazed Or Stunned
- Is Unsure Of Game Or Opponent
- Moves Clumsily
- Shows Behavior Changes
- Complains Of Not Feeling Right

WHEN IN DOUBT, SIT 'EM OUT!!!

ALL SYMPTOMS MAY NOT SHOW IMMEDIATELY.
MONITOR CAREFULLY FOR FIRST 24 HOURS

5. INSURANCE. At least ten days prior to commencement of the Lease Term, City shall provide the Board with a Certificate of Insurance in the amounts of not less than \$3,000,000 single limits General Liability coverage. Such insurance coverage shall specifically name the Vineland Board of Education, its respective directors, members, officers, agents and employees as additional insureds. Such insurance shall cover any damage or injury to any and all officers and employees of the Board or third parties as a result of the use of Vineland equipment, bleachers, improvements including but not limited to dugouts installed by the City while the Board has exclusive access for use by students and staff for recreational purposes. The certificates must state that the policy may not be canceled or reduced by the insurance carrier without giving twenty (20) days' prior written notice to the Board. All of City's insurance policies shall include the following endorsement:

“Additional Insured shall include the Vineland Board of Education and their respective members, directors, officers, employees and agents. This insurance is primary to any other valid or collectible insurance or self-insurance, whether or not such other insurance or self-insurance is primary, contributory, or excess. This insurance shall apply to each named insured for occurrences taking place during the Lease Term, in all areas of the Leased Area in which any activity connected with this Agreement takes place.”

The Board reserves the right to verify adequacy of coverage and conformance with the insurance provisions set forth herein. City will not do or permit anything in or upon the

Leased Area which will conflict with the conditions of any policy of insurance or in any way increase any rate of insurance maintained in connection with the Leased Area.

At least ten days prior to commencement of the Lease Term, Board shall provide the City with a Certificate of Insurance in the amounts of not less than \$3,000,000 single limits General Liability coverage. Such insurance coverage shall specifically name the City of Vineland, its respective directors, members, officers, agents and employees as additional insureds. Such insurance shall cover any damage or injury to any and all officers and employees of the City or third parties as a result of the use of Vineland equipment, bleachers, improvements including but not limited to dugouts installed by the City while the Board has exclusive access for use by students and staff for recreational purposes. The certificates must state that the policy may not be canceled or reduced by the insurance carrier without giving twenty (20) days' prior written notice to the City. All of Board's insurance policies shall include the following endorsement:

“Additional Insured shall include the City of Vineland, Vineland Recreation Commission and their respective members, directors, officers, employees and agents. This insurance is primary to any other valid or collectible insurance or self-insurance, whether or not such other insurance or self-insurance is primary, contributory, or excess. This insurance shall apply to each named insured for occurrences taking place during the Lease Term, in all areas of the Leased Area in which any activity connected with this Agreement takes place.”

The City reserves the right to verify adequacy of coverage and conformance with the insurance provisions set forth herein. Board will not do or permit anything in or upon the Leased Area which will conflict with the conditions of any policy of insurance or in any way increase any rate of insurance maintained in connection with the Leased Area.

6. INDEMNIFICATION. City and Board shall each indemnify, hold harmless and defend the other party, its members, officers, employees and agents, from and against any and all losses, claims, fine, penalties, liability, damage, action, or expense including, without limitation, costs and attorney's fees, arising out of or relating to (i) City's or Board's use of the Leased Area, equipment, bleachers, improvements including but not limited to dugouts installed by the City during such time as either may have exclusive access in accordance with Paragraph 3 B herein; (ii) the conduct of either party's activity or work or thing conducted or which may be permitted or suffered by such party during such times as said party has exclusive access in accordance with Paragraph 3 B herein to be conducted in or about the Leased Area; (iii) any breach or default in the performance of any obligation of either party under this Agreement; (iv) any negligence, intentional misconduct and/or activities subject to strict liability of either party or any of its agents, employees, contractors, invitees, attendees, patrons or

guests; (v) the theft or misappropriation of any of City's property. During such time as either party has exclusive access to the Leased Area, that party having exclusive access shall assume all risk of damage to property equipment, bleachers, improvements including but not limited to dugouts installed by the City placed on or about the Leased Area or injury to its officers, directors, employees, agents, contractors, invitees, attendees, patrons, or any guests on or about the Leased Area from any cause and each party hereby waives all claims in respect thereof against the other and its members, officers, employees and agents.

7. DEFACEMENT OF PROPERTY, SIGNS AND POSTERS. City shall not cause or permit the Leased Area to be defaced, injured, marred or damaged in any manner. City shall not make any alterations of any kind to the Leased Area or the structures or equipment therein except such as has been approved by the Board, as referenced in Paragraph 4 d. above. City shall be responsible for any and all damage caused by City's use of the Leased Area and shall return the Leased Area, its structures and equipment and any other property supplied to City hereunder to the Board in the same condition as when possession was received by City, reasonable wear and tear and Board approved alterations excepted. Should either party learn of any damage as described herein not caused by said party, such damage shall immediately be reported to the other party. An inspection of the Leased Area shall be conducted with representatives of City and the Board prior to and after the Lease Term to determine the condition of the Leased Area and any damage thereto. The parties shall meet and discuss the condition of the Leased Area and any damage thereto and determine the responsible party for the cost of repairs. City shall cause to be completed any and all repairs required to be made to the Leased Area, and any other property or equipment owned by the Board damaged as a result of the use of the Leased Area by City, its agents, employees, contractors, invitees, attendees, patrons and guests to the reasonable satisfaction of the Board. Board shall cause to be completed any and all repairs required to be made to the Leased Area, and any other property or equipment owned by the City damaged as a result of the use of the Leased Area by Board, its agents, employees, contractors, invitees, attendees, patrons and guests to the reasonable satisfaction of the City. Failure to conduct an inspection does not relieve either party of its obligations herein. City may post, in accordance with applicable laws, signs, advertisements, show bills, poster or cards only of a type and in those locations in and about the Leased Area approved in advance by the Superintendent of Schools.

8. RESPONSIBILITY FOR CITY'S PROPERTY. Any property of any kind brought into the Leased Area by City, its agents, employees, contractors, invitees, attendees, patrons or guests shall be at the sole risk of City and shall be removed from the Leased Area by no later than 60 days following the expiration date of the lease term. In the event that the Leased Area or any portion thereof is not vacated by City within the period provided hereinabove, the Board may remove from the Leased Area and/or dispose of, at the expense of the City, any and all goods, wares, merchandise and property then on the Leased Area, or any portion thereof, and the Board shall not be liable for any damages or loss sustained by reason of such removal or disposal by the

Board, and the Board is hereby expressly released from any and all claims for damages in that connection.

9. MISCELLANEOUS.

a. City shall be liable to the Board for any damage done to the Premises, including the Leased Area, in the conduct of any events sponsored by the City, including any damage caused by acts of its attendees, employees, independent contractors retained by City in connection with the event, or their agents. The City, its attendees, employees and other persons associated either the event will confine themselves to the Leased Area and will use entrances and exits as designated by the Board.

b. The provisions of Board Policy 7510 and Regulation 7510 (copies attached) are hereby incorporated herein by reference.

10. ASSIGNMENT, SUBLETTING OR TRANSFER. City shall not assign or sublet to any person or organization for purposes other than to conduct a City sanctioned sporting or recreational event.

11. CHOICE OF LAW. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of New Jersey. Any action by either party shall be brought in the Superior Court of New Jersey, Cumberland County with waiver of trial by jury.

12. NOTICE. For the purposes of notice or demand, the respective parties shall be served by hand delivery or certified or registered mail, return receipt requested or by Federal express or similar overnight delivery at the addresses above their signatures.

13. ENTIRE AGREEMENT. This Agreement and all Rules and Regulations promulgated by the Board from time to time and provided to City constitute the entire agreement of the parties hereto, and any representations, inducements or agreements, oral or otherwise, between the parties not contained and embodied herein shall not be of any fore or effect. The Agreement may only be altered, changed or amended by an instrument in writing signed by both parties hereto.

14. SEVERABILITY. If any provision of this Agreement is held to be invalid, the remainder shall not be affected by such invalidity.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year set forth above.

VINELAND BOARD OF EDUCATION

BY: _____
MEGHAN SPINELLI, President

Attest:

SCOTT MUSTEREL, Board Secretary

CITY OF VINELAND

BY: _____
ANTHONY FANUCCI
Mayor, City of Vineland

Attest:

KEITH PETROSKY, City Clerk