



DIVISION OF BEACH SAFETY
Physical Agility Test
Release and Waiver, Hold Harmless, and
Indemnification Agreement

I, _____ (“Applicant”) hereby certify that I am **NOT** employed by the County of Volusia (County), and that I am voluntarily participating in a test of my physical agility, strength, and endurance (“Test”) for the purposes of being evaluated and considered for employment by the County of Volusia in a position for which a certain degree of physical fitness is required. I understand that this Test is offered by the County as a means of screening applicants for such positions, and that there are certain liabilities, hazards, and risks inherent to any effective test of physical agility, strength, and endurance, and that I should, if I have not already, consult a physician prior to undertaking any such test. Absent my execution of this Physical Agility Test Release and Waiver, Hold Harmless, and Indemnification Agreement (“Agreement”), the County cannot reasonably and economically conduct a proper evaluation and review of my abilities and qualifications for the position of employment the County is seeking to fill.

WHEREFORE, In consideration and exchange for the opportunity to be reviewed and evaluated for a position of employment with the County requiring a certain degree of physical agility and skill, I acknowledge and agree to the following.

(a) **ACKNOWLEDGEMENT OF RISKS AND HAZARDS.** I am aware that my participation in the Test subjects me to certain risks and liabilities inherent to tests of physical strength, agility, and endurance, including the physical and cardiovascular exertion commonly associated therewith. I further understand that I will be performing several physical tasks as part of the Test, which may include, but are not limited to, running and swimming distances, jumping, navigating natural and synthetic obstacles, and carrying and lifting; all while traversing through bodies of water that may be inhabited by hostile aquatic wildlife and/or are subject to dangerous wave activity or rip currents, or across hard concrete surfaces and/or uneven or rough terrain such as sand, dunes, or terraces (hereinafter collectively referred to as “Testing Activities”). I acknowledge that performance of these Testing Activities may subject me to severe and debilitating bodily harm or injury, including, but not limited to: (i) fractures and sprains, whether caused by falls or impacts; (ii) crush and compression injuries; (iv) cuts and lacerations, including, but not limited to, cuts and lacerations as may be associated with shark bites or impacts against sharp objects; (v) mild to severe contusions; (vi) stroke, including strokes induced by extreme heat or cardiovascular stress; (vii) cardiac arrhythmia or arrest (*i.e.*, heart attack); and/or (viii) drowning; each of which types of injuries or events may result in temporary or permanent mental and/or physical disability, amputation, paralysis, or death. I hereby assume such risks and hazards as being inherent to the Testing Activities and my consideration for employment with the County.

- (b) **INFECTIOUS DISEASES.** I understand and agree that by participating in the Test and being involved in the Testing Activities, I am at greater risk than the general population of being exposed to infectious diseases and irritants, both chemical and natural, including, but not limited to, Methicillin-Resistant Staphylococcus Aureus (MRSA), an aggressive staph bacteria that does not respond to some antibiotics commonly used to treat staph infections, tetanus, a medical condition characterized by a prolonged contraction of skeletal muscle fibers, whether by injury or contact with such diseases, harmful algal blooms, including red tide, and/or chlorine bleach or fumes. I further understand and agree that any one of the foregoing illnesses or diseases can have devastating impact and permanent consequences on the quality of my life including, but not limited to, general discomfort, irritation, redness and swelling, hospitalization, long-term adverse health complications, temporary or permanent disability, loss of employment, and even death.
- (c) **DECORUM AND CONDUCT.** I understand and agree that my presence on County-owned, controlled, or leased properties (real and tangible) is that of an invited guest, and that if I engage in any wrongful, rude, or disrespectful conduct or behavior, cause any disruptions, or otherwise fail to obey the orders or instructions of County personnel, the County may immediately and permanently expel me from the Test and further consideration for employment with the County; remove me from all County-owned, controlled, or leased properties; and deem me ineligible for further testing or consideration for employment with the County. Furthermore, I understand and agree that I may be subjected to civil and/or criminal liability for engaging in any such conduct or behavior, where such behavior rises to the level of illegal conduct or otherwise results in fiscal losses or other damage to the County.
- (d) **STATUS AS UNCOMPENSATED APPLICANT.** I understand and agree that my relationship with the County of Volusia is that of an uncompensated applicant participating in the Test, who is not a permanent or temporary employee, contract employee, agent, volunteer, contractor, consultant, or part-time or full-time employee of the County. I understand and agree that based on my uncompensated applicant status described herein, I have no right whatsoever and will not assert any right or claim against the County, its agencies, employees, officers (elected or appointed), or contractors for Workers' Compensation coverage or benefit packages, including health insurance and/or liability insurance, and that it is my responsibility to ensure that I am covered under a liability policy. If I make any such a claim or assertion against the County, I, or, if I am a minor, my custodial parent or legal guardian, agree to indemnify and hold harmless the County for any and all losses, costs, or damages the County incurs as a result of any such claim(s).
- (e) **MEDICAL INSURANCE.** I understand and agree that I am solely responsible for the procurement and maintenance of health, medical, funeral, life, and/or other related insurance to provide for my immediate and long term care and the needs of my family or other dependents, if any, in the event that I suffer injury or death or contract an illness, disease, other debilitating medical condition during or as a result of my participation in the Test and Testing Activities.
- (f) **ASSUMPTION OF RISK.** I hereby understand and agree to assume all risk, responsibility and liability to myself for any personal injury, psychological or psychiatric trauma, or wrongful death

that may result from my participation in the Test or Testing Activities arising from my negligence or the negligence of the County or any third party. As such, it is my intention to waive all rights and release and discharge the County from and neither sue nor bring any proceeding against the County for any claim, demand, or cause of action arising from my negligence, or any negligence or omission of the County or any third party as a result of my participation in the Test. Further, it is my intention that this assumption of risk and the waiver and release described herein shall be binding on myself, including any and all of my personal representatives, heirs, executors, trustees, administrators, agents, and assigns.

(g) **WAIVER AND RELEASE.** I hereby irrevocably agree on behalf of myself and all of my personal representatives, heirs, executors, administrators, agents, and assigns to waive, release, and forever discharge any and all actions, suits, obligations, debts, liens, causes of actions or claims or causes of action (known and unknown) for damages against the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status (hereinafter collectively referred to as the "Released Parties") for personal injury, death, property damage, workers compensation, disability, unemployment compensation, wage, costs, expenses, attorney's fees, damages, judgments, orders, or liabilities of whatever kind or nature in law, equity, arising out of the negligence of County or my participation in the Test and Testing Activities in connection with the County (directly or indirectly), whether active or passive, which may hereafter accrue to me or any of my personal representatives, heirs, executors, administrators, agents, and assigns (hereinafter "Waiver and Release"). Further, I acknowledge and agree that this Waiver and Release is irrevocable and includes, without limitation, waiver and release of the County for any injury, illness, disease, or death that may occur as a result of my, the County's, or any third party's negligence while I am participating in the Test and Testing Activities described herein.

(h) **I ACKNOWLEDGE THAT I HAVE CAREFULLY READ AND REVIEWED THIS WAIVER AND RELEASE. I FULLY UNDERSTAND THAT BY EXECUTING IT, I AM GIVING UP MY RIGHTS TO BRING ANY LEGAL ACTION OR ASSERT ANY CLAIM AGAINST THE COUNTY OF VOLUSIA INCLUDING ITS DISTRICTS, AUTHORITIES, SEPARATE UNITS OF GOVERNMENT ESTABLISHED BY LAW, ORDINANCE OR RESOLUTION, PARTNERS, ELECTED AND NON-ELECTED OFFICIALS, EMPLOYEES, AGENTS, VOLUNTEERS, AND ANY PARTY WITH WHOM THE COUNTY HAS AGREED BY CONTRACT TO PROVIDE ADDITIONAL INSURED STATUS ON THE BASIS OF THE NEGLIGENCE OF THE COUNTY, ANY THIRD PARTY, OR MYSELF ARISING FROM OR IN CONNECTION WITH MY PARTICIPATION IN THE TEST, TESTING ACTIVITIES, OR OTHER INTERACTIONS WITH THE COUNTY OF VOLUSIA. IN ADDITION, I ACKNOWLEDGE THAT I HAVE VOLUNTARILY SIGNED THIS WAIVER AND RELEASE AND FURTHER AGREE THAT NO ORAL REPRESENTATIONS, STATEMENTS, OR INDUCEMENT APART FROM THE FOREGOING WRITTEN WAIVER AND RELEASE HAVE BEEN MADE TO ME BY THE COUNTY OR ITS AGENTS OR REPRESENTATIVES.**

(i) **SEVERABILITY.** The provisions of this Waiver and Release are severable, and, if any provision is determined to be illegal or unenforceable, the remaining provisions and any partially enforceable provisions shall nevertheless be enforceable. The County's failure to enforce any remedy or provision in this document shall not be construed as a waiver of such remedy or provision.

This Physical Agility Test Release and Waiver, Hold Harmless, and Indemnification Agreement is hereby Agreed to and accepted by:

PARTICIPANT'S SIGNATURE

DATE

PARTICIPANT'S NAME – LEGIBLY PRINTED

TELEPHONE

**STATE OF FLORIDA,
COUNTY OF VOLUSIA.**

The foregoing instrument was acknowledged before me on _____ by

_____, who is personally known to me or who has produced

_____ as identification and who did (did not) take an oath.

*Name of Notary (typed, printed or
Stamped, include Commission Number)*

IF PARTICIPANT IS UNDER 18 YEARS OF AGE, A CUSTODIAL PARENT OR LEGAL GUARDIAN MUST SIGN ON BEHALF OF AND IN ADDITION TO THE PARTICIPANT, CERTIFYING THAT SUCH PARENT OR GUARDIAN HAS FULLY REVIEWED THIS AGREEMENT WITH PARTICIPANT AND AGREES TO ITS TERMS AND CONDITIONS:

CUSTODIAL PARENT/LEGAL GUARDIAN'S SIGNATURE

DATE

CUSTODIAL PARENT/LEGAL GUARDIAN'S NAME – LEGIBLY PRINTED)

TELEPHONE

**STATE OF FLORIDA,
COUNTY OF VOLUSIA.**

The foregoing instrument was acknowledged before me on _____ by

_____, who is personally known to me or who has produced

_____ as identification and who did (did not) take an oath.

*Name of Notary (typed, printed or
Stamped, include Commission Number)*