

AGREEMENT EXTENSION

Reference Contract No.:

AGREEMENT dated February 13, 1990 and ADDENDUM TO USE AGREEMENT dated September 11, 2003

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, a public corporation and governing body of the school district of Brevard County, duly created in accordance with Article IX, Section 4(b) Florida Constitution, and Chapter 230, Florida Statutes (hereinafter referred to as the "SCHOOL BOARD") and the CITY OF COCOA BEACH, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as the "CITY") extending AGREEMENT dated February 13, 1990 and ADDENDUM TO USE AGREEMENT dated September 11, 2003.

WITNESSETH:

WHEREAS, the SCHOOL BOARD and the CITY entered into an AGREEMENT on February 13, 1990 (1990 AGREEMENT) to provide recreational facilities on Property owned by the SCHOOL BOARD, described as:

Beginning at the Northeast Corner of Section 16, Township 25 South, Range 37 East and run thence South 1980 feet; thence West 1980 feet; thence North 1980 feet; thence East 1980 feet to the point of beginning, containing 90 acres in Brevard County, Florida, and;

WHEREAS, the SCHOOL BOARD and the CITY entered into an ADDENDUM TO USE AGREEMENT on September 11, 2003 to utilize a portion of the Property for the purpose of designing, constructing, maintaining and providing the students and the public with a Skate Park and;

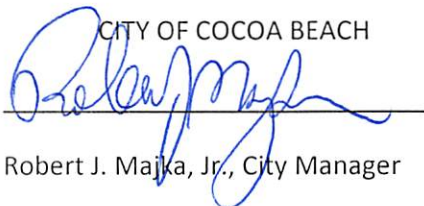
WHEREAS Section 1 of the 1990 AGREEMENT has an option for the CITY to extend the AGREEMENT for an additional twenty-five (25) years upon giving notice of their intent to exercise the option to extend the AGREEMENT within the last year of the original agreement term which is set to end on February 13, 2015.

NOW THEREFORE, the CITY wishes to exercise the option in Section 1 of the 1990 AGREEMENT to extend the contract for an additional twenty-five (25) years. The extension shall be effective on February 13, 2015 and shall be in force until February 13, 2040 unless both parties mutually agree to amendment(s), or cancellation, or unless either party materially and/or substantially violates the terms of the contract as outlined in Section 1 of the 1990 AGREEMENT and the contract is cancelled at an earlier date.

All terms and conditions of said 1990 AGREEMENT and ADDENDUM TO USE AGREEMENT shall remain in full force and effect for this extension.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT EXTENSION by their duly authorized officers on the day, month, and year set forth above.

CITY OF COCOA BEACH

  
Robert J. Majka, Jr., City Manager

THE SCHOOL BOARD OF BREVARD COUNTY

  
Dr. Brian Binggeli, Superintendent



(407) 783-4911

# City of Cocoa Beach

*Excellent Recreation and Quality Living*

2 South Orlando Avenue / P.O. Box 320280 • Cocoa Beach, FL 32932-0280

March 2, 1990

Mr. John Forbes, Assistant Superintendent  
Business & Fiscal Services  
School Board of Brevard County  
3205 South Washington Avenue  
Titusville, Florida 32780

Re: Use Agreement for Recreation Facilities Behind the Schools

Dear John:

At the Regular Commission Meeting held on March 1, 1990, the City Commission voted to approve the language of the above-referenced Use Agreement between the Brevard County School Board and the City.

Per your request, enclosed please find two signed copies of the Agreement.

Thanks again for all your help with this project.

Sincerely,

William A. Ryan  
City Manager

WAR:bn

Enclosure:  
Use Agreement (2 copies)

cc: City Clerk (with original of Agreement)

A G R E E M E N T

This Use Agreement made this 13 day of February, 1990, by and between THE SCHOOL BOARD OF BREVARD COUNTY, party of the first part, hereinafter called the "BOARD", and the CITY OF COCOA BEACH, FLORIDA, a body incorporate under the laws of Florida, party of the second part, hereinafter called the "CITY".

WITNESSETH:

WHEREAS, the BOARD holds and controls in public trust certain real property located on the campuses of Cocoa Beach High School (1500 Minuteman Causeway, Cocoa Beach, Florida) and Roosevelt School (1400 Minuteman Causeway, Cocoa Beach, Florida), within the borders of the CITY, and

WHEREAS, the CITY wishes to expand its recreational facilities for citizens on both adjacent CITY-owned property and a portion of the property owned by the BOARD, and

WHEREAS, the CITY'S development of recreational facilities will benefit both the BOARD and the CITY, and

WHEREAS, the BOARD concurs that the CITY'S development of recreational facilities will benefit both the BOARD and the CITY by this joint use agreement,

NOW, THEREFORE, be it resolved that the parties agree to the following terms and conditions:

1. This agreement shall remain in effect for a period of twenty-five (25) years unless the parties mutually agree to amendment(s) or cancellation or unless either party materially and/or substantially violates the terms stated herein. In such case of violation, this agreement may be terminated by the affected party by giving no less than sixty (60) days written notice to correct said violation and if not corrected, to cancel same. CITY has the option to extend the Agreement for an additional twenty-five (25) years upon giving notice thereof within the last year of this Agreement.

2. This agreement covers a portion of the real property described below:

Beginning at the Northeast Corner of Section 16, Township 25 South, Range 37 East and run thence South 1980 feet; thence West 1980 feet; thence North 1980 feet; thence East 1980 feet to point of beginning, containing 90 acres, in Brevard County, Florida.

3. The BOARD agrees to allow the CITY to construct the following recreational facilities upon the BOARD'S above described real property at the total expense of the CITY. Such facilities constructed on BOARD property shall be in compliance with State Department requirements and the CITY shall secure a bond(s) that may be required by F.S. 255.25 for changes made to the BOARD'S property.

A. One (1) lighted baseball fields, two (2) softball field and one (1) lighted combination of softball/baseball field.

- B. AN enclosed facility containing restrooms, concession stand, storage space and scorer's booth located to the center of the above described fields.
- C. Four (4) practice softball and baseball fields.
- D. Six (6) regulation grassed areas to be used for soccer practices and matches.
- E. A parking area meeting current land-use and environmental standards containing approximately 250 spaces.
- F. A roadway approximately thirty (30) feet wide providing access to said parking area.
- G. An irrigation system and fencing installed and maintained by the CITY for the above described facilities.
- H. A safe foot bridge or other access route over or around the inlet separating the BOARD'S property from the CITY'S other recreational facilities on the adjacent property, if necessary permits can be obtained.
- I. The construction of the above described facilities shall be done at a time and manner so as not to disrupt Cocoa Beach High School's normal interscholastic schedule of games, meets, matches or practice.
- J. The parties agree to share the cost of constructing a security fence between CBHS and the CITY'S recreational facilities as necessary to prevent vandalism to Cocoa Beach High.
- K. Prior to beginning construction, the CITY will submit the plans to the BOARD'S representative for approval as to location.

4. The Cocoa Beach High School Men's and Women's Varsity golf, swimming/diving and tennis teams shall be allowed to use the CITY'S golf, swimming/diving and tennis facilities at special rates currently prescribed by ordinance during the state-approved practice and regular interscholastic seasons. The fees shall be subject to increases at the same percentage rates as charged to other users for the respective facilities.

*Dave Manning + Billy Scott*

*IS THIS BEING DONE?*

5. The CITY shall give Cocoa Beach High School first priority usage of at least one (1) baseball and one (1) softball field constructed on the BOARD'S property for practice and interscholastic games.

*Are they changed?*

6. During the time the BOARD is utilizing the softball and baseball fields for interscholastic games, the CITY shall allow the BOARD to use the restrooms, concession stand and scorers's facilities and installed equipment. The BOARD shall provide necessary supervision and security to reasonably insure that the CITY's facilities are protected from damage.

7. The BOARD shall mow the soccer fields and practice football field on a normal scheduled basis. The CITY shall mow soccer fields to accommodate soccer games upon the request of the school principal.

8. Cocoa Beach High and Roosevelt School shall be allowed to use the Community Auditorium at a reduced rate from those fees charged by the CITY to other groups.

*See 26. Club 19 Contract*

9.

In the event the BOARD decides to close down the pool at Cocoa Beach High School, the BOARD shall be allowed to use the CITY's swimming pool for physical education instruction during normal school hours at a user fee equivalent to one-half the annual maintenance and repair costs incurred by the BOARD for their pool in FY 1989. This user fee will be subject to increase at the same percentage rate as all other CITY pool user fees.

*Are we collecting this?*

10. During times the CITY is conducting programs or allowing public use of the facilities located on BOARD property, the CITY shall provide security at a level to reasonably insure that the BOARD'S facilities are protected from damage.
11. The BOARD agrees to enter into good faith negotiations with the CITY for the use of the gymnasium located in Roosevelt School.
12. The CITY shall hold the BOARD harmless and indemnify the BOARD from any and all liability with respect to any and all personal injury or property damage whatsoever sustained by CITY employees, agents or visitors to the area participating in CITY sponsored or regulated activities. Such indemnification by the CITY to the BOARD shall include any and all legal fees, judgements or settlements for personal injuries or property loss or damaged sustained by any person while on the subject property. The BOARD shall indemnify and hold the CITY harmless from any and all liability with respect to any personal injury or property damage sustained by individuals participating in BOARD sponsored or regulated activities.

13. The CITY shall name and maintain the BOARD as an additional insured in the CITY'S liability insurance policy whether fully or self-insured. Documentation of such additional insured designation shall be forwarded to the BOARD by the CITY at the beginning of each policy year. Said insurance shall protect and save and keep the BOARD harmless and indemnified against and from any penalty or damage or charges imposed for any violation of any laws or ordinances whether occasioned by the CITY or its agents or employees.
14. The BOARD shall not take actions which will materially prevent the CITY from carrying out the public recreation intent of this agreement.
15. Except as provided herein, the CITY shall be responsible for all costs related to construction and maintenance for all facilities the CITY constructs on BOARD property.
16. Upon termination of this agreement, the parties shall negotiate such terms as may be in their respective best interest.
17. Prior to the CITY beginning construction of the above described facilities, the BOARD shall review the plans for such facilities in the form of schematic drawings to ensure that the project meets applicable State Board of Education Codes.
18. The parties hereto understand that there may arise from time to time in the administration of the intent of this agreement, situations in which ministerial or administrative task and decisions need to be made and the parties do hereby delegate and assign the right to make and implement such decisions, as follows:



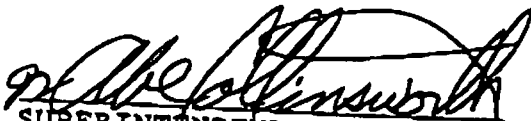
- On behalf of the CITY, to the City manager or designee
- On behalf of the BOARD, the Superintendent or designee


If any provision of this agreement is determined to be in violation of any applicable statute, rule, ordinance or policy, this agreement shall be deemed modified so as to comply with said statute, rule, ordinance or policy.

IN WITNESS WHEREOF, the parties have hereto caused this agreement to be signed by their respective officers.

THE SCHOOL BOARD OF BREVARD COUNTY,  
FLORIDA

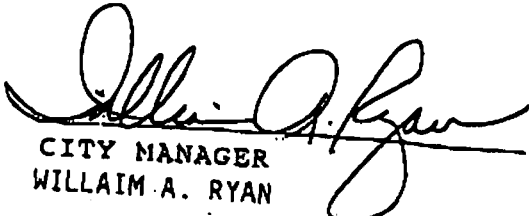
ATTEST:


  
SUPERINTENDENT


  
CHAIRMAN

THE CITY OF COCOA BEACH, FLORIDA

ATTEST:

  
CITY MANAGER  
WILLIAM A. RYAN

  
MAYOR  
ROBERT E. LAWTON

  
DONNA R. ARCHER, CMC  
CITY CLERK

## ADDENDUM TO USE AGREEMENT

**THIS ADDENDUM TO USE AGREEMENT ("Addendum")**, is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between **THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA**, a public corporation and governing body of the school district of Brevard County, duly created in accordance with Article IX, Section 4(b) Florida Constitution, and Chapter 230, Florida Statutes (hereinafter referred to as the "SCHOOL BOARD") and the **CITY OF COCOA BEACH, FLORIDA** a municipal corporation of the State of Florida (hereinafter referred to as the "CITY") amending that certain Agreement by and between the SCHOOL BOARD and the CITY entered into February 13, 1990 for the purpose of providing recreational facilities.

### WITNESSETH:

**WHEREAS**, the SCHOOL BOARD and the CITY entered into an Agreement on February 13, 1990 to provide recreational facilities on Property owned by the SCHOOL BOARD described as:

Beginning at the Northeast Corner of Section 16, Township 25 South, Range 37 East and run thence South 1980 feet; thence West 1980 feet; thence North 1980 feet' thence East 1980 feet to the point of beginning, containing 90 acres in Brevard County, Florida.

**WHEREAS**, the SCHOOL BOARD and the CITY desire to amend the Agreement to add facilities for the mutual benefit of the parties and the betterment of service to the students and the public;

**WHEREAS**, the CITY desires to utilize a portion of the Property for the purpose of designing, constructing, maintaining and providing the students and the public with a Skate Park;

**WHEREAS**, the CITY will apply for grants for the construction of the Skate Park and desires to hold title to the land for such grant applications;

**WHEREAS**, the SCHOOL BOARD is amenable to conveying the Property for the purposes hereinafter set forth;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants hereinafter contained and other good and valuable considerations, the parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

1. The SCHOOL BOARD agrees to convey, and the CITY agrees to accept title on the terms and conditions herein set forth, all of the SCHOOL BOARD's right, title and interest therein to a portion of the Property, hereinafter referred to as "the Parcel" and more particularly described in Schedule 1.

2. The SCHOOL BOARD shall convey the property by warranty deed with a reverter clause stating that ownership of the Property shall revert to the SCHOOL BOARD in the event the CITY does not construct and operate a SKATE PARK on the Property. The CITY agrees that such reverter shall take effect if the CITY does not commence construction within two years of the effective date of this Addendum, or such extension of time to commence construction granted in writing by the SCHOOL BOARD upon a showing by the CITY that such extension is reasonable and that the CITY has diligently pursued the Skate Park and funding for the construction. The deed shall be recorded within ten (10) days of the Effective Date of this Addendum.

3. The CITY will construct on the Property, at its sole cost and design, a Skate Park for the use of the general public.

a. Ingress and egress to the Skate Park shall be granted by the SCHOOL BOARD from Minutemen Causeway across an existing paved driver's education course, such ingress and egress being the same as that being utilized by the public to access the existing ball field complex.

b. The CITY shall maintain the Skate Park in an attractive manner and working order to the same standards as other CITY maintained and operated parks.

c. The CITY shall open the restroom facilities at the adjacent ball field complex to the public during the operating hours of the Skate Park.

d. The CITY shall fence, in an attractive manner, the perimeter of the Skate Park and prohibit entrance to the Skate Park during non-operating hours. The fence shall be a height that restricts easy access to the Skate Park.

e. The Skate Park shall not be open for use or operated during school hours, specifically thirty (30) minutes prior to the first class and thirty (30) minutes after the last class of any of the schools adjacent to the Skate Park, excluding Summer School. The SCHOOL BOARD shall provide the CITY with an annual school schedule and calendar.

f. Parking for the Skate Park will be the existing paved and grass parking utilized by the public for the ball fields.

g. The CITY agrees that it shall not operate the Skate Park after dark until such time as lighting is provided for ingress, egress and the parking area. Once lighting is constructed, it shall be provided twenty (20) minutes prior to sun down and remain on until one (1) hour after the park closes.

4. The SCHOOL BOARD and CITY will provide adequate security and supervision of their visitors, patrons, spectators, or guests from the time they enter the other party's property and until they leave the other party's property regardless of where their visitors, patrons, spectators, or guests go on the other party's property.

5. The SCHOOL BOARD and CITY agree that each party has complied with the terms and conditions of the February 13, 1990 Interlocal Agreement to date and that neither is in breach thereof. Except as provided herein, the terms and conditions of the February 13, 1990 Interlocal

Agreement remain in full force and effect except for section 12. Section's 4, 6, 7, 8, 9 and 10 of this addendum agreement shall henceforth replace section 12 of the February 13, 1990 Interlocal Agreement.

6. The SCHOOL BOARD and CITY agree to indemnify and hold the other party harmless from all liability for any injury or damage including claims of discrimination or intentional acts or a similar magnitude which occurs on the property or in any facility pursuant to this agreement and which occurs during the course of any program or activity sponsored by the other party to this agreement. The SCHOOL BOARD and CITY'S promise to indemnify and hold *harmless* also includes an obligation to assume full responsibility and expense of investigation, litigation, judgement (s), and/or settlement of any complaint, claim or legal action. As used in this paragraph, the term "SCHOOL BOARD" and "CITY" includes any of its agents, servants and employees.

7. Nothing in this agreement shall be deemed as a waiver of sovereign immunity for either the SCHOOL BOARD or the CITY beyond any statutory limited waiver which may have been or may be adopted by the Florida Legislature and nothing in this agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity.

8. The SCHOOL BOARD and CITY agree to comply with any and all federal, state and local civil rights laws, including, but not limited to Title VI of the Civil Rights Act of 1964 as amended; Title VII of the Civil Rights Act of 1968 as amended; Section 109 of title I of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973; the American with Disabilities Act of 1990; the Age and Discrimination Act of 1975; Executive Order 11063; and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

9. The SCHOOL BOARD and CITY will not discriminate against any employee, applicant for employment, or clients because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to providing services under this Agreement. The SCHOOL BOARD and CITY will take affirmative action to insure that all employment practices and assistance to clients are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff, termination, rates of pay for other forms of compensation, and selection for training, including apprenticeship. The SCHOOL BOARD and CITY agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the SCHOOL BOARD and CITY setting for the provisions of this nondiscrimination clause.

10. Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other paragraph or any part of any paragraph in this Agreement.

11. For all purposes of this Addendum, the Effective Date hereof shall mean the date when the last of the SCHOOL BOARD or the CITY has executed the same, and that date shall be inserted at the top of the first page hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be subscribed by their fully authorized representatives, manner and form sufficient to bind them as of the dates indicated hereinafter.

**THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA:**

BY: \_\_\_\_\_  
JANICE KERSHAW, CHAIRPERSON

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Richard A. DiPatri, Ed.D.  
Superintendent

**THE CITY OF COCOA BEACH:**

BY: \_\_\_\_\_  
LEON "SKIP" BEELER, MAYOR

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Chuck Billias  
City Manager

**Schedule 1**  
**Legal description of Parcel**

Commence from the NE corner of Section 16, Township 25, Range 37 East , as recorded in Plat Book 11 page 25 of the Public Records of Brevard County; thence run South 89 degrees 39 minutes 43.1 seconds West 773.66 feet; thence South 05 degrees 00 minutes 24.8 seconds West 1034.94 feet to the POINT OF BEGINNING; thence North 69 degrees 14 minutes 47 seconds East 171.36 feet to a Point of Curvature; thence curve to the left, Radius 300.00 feet, Central Angel 52 degrees 17 minutes 39.5 seconds West 65.05 feet; thence South 52 degrees 22 minutes 15.4 seconds West 80.85 feet'; thence North 26 degrees 18 minutes 40.6 seconds West to the POINT OF BEGINNING. Total area +/- 0.74 acres.