

USE AGREEMENT

Clerk Of Courts, Brevard County
#Names: 2
Rec: 57.00 Serv: 0.00
Deed: 0.00 Excise: 0.00
Mig: 0.00 Int Tax: 0.00

This Use Agreement, made and entered into this 1st day of September, 2005, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as the "County", and the CITY OF MELBOURNE, FLORIDA, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, on March 18, 1965, the County and the City entered into a 40-year Lease Agreement to allow the City to use a parcel of property owned by the County located in Melbourne, Florida, commonly known as Lipscomb Park, as a recreational facility for the benefit of the citizens of Brevard County, Florida; and

WHEREAS, the State of Florida has grant programs that may provide additional funds to the City for the express purpose of providing recreational improvements for said park; and

WHEREAS, the State of Florida typically requires a minimum of 25 years remaining on any agreement to qualify for such grant funds; and

WHEREAS, the County has no present or immediate plans for the use of said property; and

WHEREAS, in consideration of this conveyance, the County has agreed to allow the City the sole and exclusive use of certain properties owned by the County for public recreational purposes.

NOW, THEREFORE, in consideration of the covenants and promises herein contained, it is mutually agreed between the parties as follows:

1. The foregoing recitals are true. Failure of the foregoing recitals to be true and correct shall not invalidate this Agreement.
2. The County does hereby agree to allow the City the primary use of the following described real property:

Commence at the Southwest corner of the Southwest one-quarter of said Section 11, said point being a found nail and disk, thence South 88°25'45" East along the South line of said Section 11 for a distance of 58.01 feet; thence North 00°28'27" East for a distance of 25.00 feet to the point of beginning of the herein described parcel, said point also being a point on the East right of way line of Lipscomb Street and a point on the North right of

way line of Florida Avenue; thence continue North 00°28'27" East along said East right of way line, said line being parallel to and 58.00 feet easterly of the West line of Section 11, for a distance of 1278.70 feet to a point on the North line of said Southwest one-quarter of the Southwest one-quarter; thence South 89°04'15" East along said North line for a distance of 1239.52 feet to a point on the West right of way line of Monroe Street; thence South 88°12'38" West along said West right of way line, said line being parallel to and 25.00 feet westerly of the East line of said Southwest one-quarter of the Southwest one-quarter for a distance of 1292.38 feet to a point on the North right of way of said Florida Avenue; thence South 88°25'45" East along said North right of way line, said line being parallel to and 25.00 feet northerly of the South line of Section 11, distance of 1241.52 feet to the point of beginning, containing 36.61 acres, more or less.

This Use Agreement shall be for a term of twenty-five (25) years provided the property is used for public recreational purposes.

3. This Agreement shall be automatically extended for one additional year annually (so as to maintain the 25-year term of the agreement to qualify for state grant funds) unless notification is provided in writing by either party, within 60 days of the annual anniversary date of this Agreement, of their desire to not allow the automatic extension.

4. The City shall pay any and all costs incurred relative to the use of such recreational facilities, including, but not limited to, custodial and utility charges and any and all program costs related thereto. The City agrees to provide all maintenance and repair to existing and anticipated buildings, roadways, parking areas, fields, play areas and equipment, lighting and all other land mass at the park. This includes any improvements that may be approved for construction on the subject property and any equipment placed thereon by the City.

5. The City shall not use any of the above described premises in any unlawful, improper or offensive manner contrary to any applicable law, rule or regulation and shall not use the premises in a manner to be injurious to any person or property or to endanger or affect any insurance on the subject property or to increase the premium thereof. The City further agrees that in the event insurance premiums are increased due to the City's use of the property, the City will reimburse the County the amount of the additional premium cost.

6. The City shall retain title to and the ownership of all personal property purchased by the City and placed on the premises unless otherwise agreed in writing by the parties. All personal property belonging to the City shall be marked in a manner consistent with the character of the property.

7. The County shall not be liable, responsible, have oversight or provide maintenance for any personal property brought on, constructed or placed on the premises by the City or belonging to the City.

8. The City agrees to indemnify, defend and hold the County harmless from all negligence liability, intentional acts, discriminatory acts or allegations, claims, damages, losses, expenses (including reasonable attorney's fees) arising out of any proceeding or cause of action connected with the performance of any services, duty, obligation or respective use as set forth herein for any injury or damage which occurs on the property or in any facility on the property pursuant to this Agreement except to the extent the injury or damage arises from the negligent or intentional acts or omissions of the County. The City's promise to indemnify and hold harmless also includes an obligation to assume full responsibility and expense of investigation, litigation, judgments(s), and/or settlement of any complaint, claim or legal action. As used in this paragraph, the term "County" includes any of its agents, servants, and employees.

9. None of the provisions in this Agreement are intended to or shall act as a waiver of any defense of sovereign immunity, which either of the parties have under Florida Statutes section 768.28 or successor statutes.

10. Each party reserves the right to exercise its functions hereunder through its designated representative.

11. When it is determined to be in the best interest of the City, the City Manager or his designee on behalf of the City, may terminate this agreement upon delivery of a one hundred twenty (120) day written notice thereof by the City Manager, or his designee, to the County. Notice under this Use Agreement shall be given to the Brevard County Parks and Recreation Department Director, 2725 Judge Fran Jamieson Way, Viera, FL 32940-6699.

12. When it is determined to be in the best interest of the County, this agreement may be terminated upon receipt of a one hundred twenty (120) day written notice thereof being delivered by the Brevard County Board of County Commissioners or their designee, to the City.

Notice under this Use Agreement shall be given to the City Manager, 900 E. Strawbridge Avenue, Melbourne, Florida 32901-4739.

13. Venue for any legal action brought by any party to this Use Agreement to interpret, construe or enforce the agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

14. Should termination of this agreement occur, the County shall have the discretion to require the City to gate and lock the paved entrances into the park.

15. This Use Agreement shall be deemed to have been executed and entered into within the State of Florida. And any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

16. No modification of this Use Agreement shall be binding on the County or the City unless reduced to writing and signed by a duly authorized representative of the County or the City.

17. If any provision of this Use Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

18. This Agreement shall become effective upon the recordation in the public records of Brevard County, Florida, of a fully executed original.

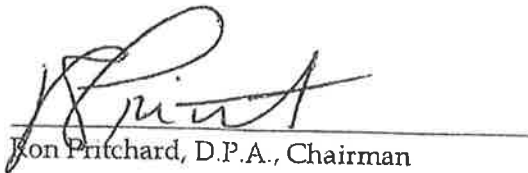
ATTEST:



Scott Ellis, Clerk

(SEAL)


BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Ron Pritchard, D.P.A., Chairman

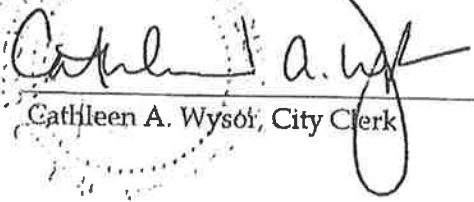
As approved by the Board on 9/1/05

Reviewed for legal form and content

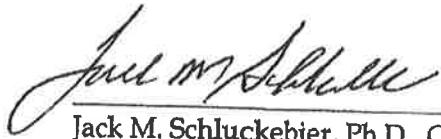
by: 
Asst. County Attorney

(Signatures continued on next page)

ATTEST:

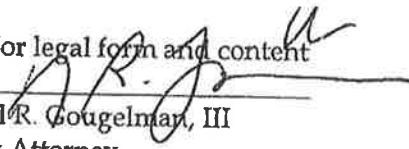

Cathleen A. Wysor, City Clerk

THE CITY OF MELBOURNE, FLORIDA


Jack M. Schluckebier, Ph.D., City Manager

As approved by the Council on _____, 2005

September 13

Reviewed for legal form and content
by: 

Paul R. Gougelman, III
City Attorney