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# MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

<b>SUBJECT</b>	AGREEMENT FOR TEMPORARY ACCESS TO PALMETTO HIGH SCHOOL THROUGH BLACKSTONE PARK	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	FEBRUARY 3, 1998	<b>DATE SUBMITTED/REVISED</b>	JANUARY 28, 1998
<b>BRIEFINGS?/WHO?</b>	NONE	<b>CONSEQUENCES IF DEFERRED</b>	NONE
<b>DEPARTMENT/DIVISION</b>	COUNTY ADMINISTRATOR	<b>AUTHORIZED BY TITLE</b>	ERNE PADGETT COUNTY ADMINISTRATOR
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	DAVE ROTHFUSS 3722 <i>DRK 1/28/98</i>	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	DAVE ROTHFUSS 3722
<b>ADMINISTRATIVE APPROVAL</b>	<i>[Signature]</i>		

### ACTION DESIRED

INDICATE WHETHER "REPORT OR "DISCUSSION, "FORM OF MOTION, OR "OTHER ACTION REQUIRED:

AUTHORIZATION FOR THE CHAIRMAN TO EXECUTE AGREEMENT FOR TEMPORARY ACCESS THROUGH AND USE OF BLACKSTONE PARK BETWEEN THE SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, AND THE COUNTY OF MANATEE, FLORIDA.

### ENABLING/REGULATING AUTHORITY

FEDERAL/STATE LAW(S), ADMINISTRATIVE RULING(S), MANATEE COUNTY COMP PLAN/LAND DEVELOPMENT CODE, ORDINANCES, RESOLUTIONS, POLICY.)

THE BOARD OF COUNTY COMMISSIONERS MUST EXECUTE AGREEMENTS WITH OTHER GOVERNMENTAL AGENCIES.

### BACKGROUND/DISCUSSION

- THE MANATEE COUNTY SCHOOL DISTRICT HAS BEEN RENOVATING PALMETTO HIGH SCHOOL, WHICH IS ADJACENT TO BLACKSTONE PARK, WHICH IS OWNED BY THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS. SCHOOL DISTRICT STAFF REQUESTED THAT THE SCHOOL BOARD BE ALLOWED TEMPORARY ACCESS TO PALMETTO HIGH SCHOOL THROUGH BLACKSTONE PARK DURING THE RENOVATION AND REDEVELOPMENT OF PALMETTO HIGH SCHOOL.
- ATTORNEY ALAN PRATHER PREPARED THE ATTACHED AGREEMENT, WHICH WAS APPROVED BY THE SCHOOL BOARD ON DECEMBER 15, 1997.
- THE TERM OF THE AGREEMENT IS NOVEMBER 1, 1997, THROUGH DECEMBER 31, 1998, AND MAY BE EXTENDED BY WRITTEN AGREEMENT OF THE PARTIES.
- UPON EXPIRATION OF THE AGREEMENT, THE SCHOOL BOARD WILL RETURN THE AREA UTILIZED FOR THE TEMPORARY ACCESS TO THE COUNTY IN THE SAME OR LIKE CONDITION AS EXISTING PRIOR TO THE COMMENCEMENT OF THE AGREEMENT, INCLUDING REPLACEMENT OF THE GUARDRAIL AND GATES.
- ATTACHED AS WELL IS A MEMORANDUM FROM SENIOR ASSISTANT COUNTY ATTORNEY MITCHELL O. PALMER, WHICH SETS FORTH HIS REVIEW COMMENTS RELATING TO THE TEMPORARY ACCESS AGREEMENT. ATTORNEY PALMER SUGGESTED TWO CHANGES TO THE SUBJECT AGREEMENT AT PARAGRAPH 4 AND PARAGRAPH 6, AND CLARIFICATION OF THE MANNER IN WHICH THE CONTRACTOR'S VEHICLES AND EQUIPMENT WILL ENTER BLACKSTONE PARK TO ACCESS THE PALMETTO HIGH SCHOOL RENOVATION PROJECT SITE.
- AS TO THE ACCESS ROUTE, ATTORNEY PALMER IS CORRECT THAT VEHICLES AND EQUIPMENT HAVE ENTERED BLACKSTONE PARK FROM 14TH AVENUE WEST, TRAVEL IN AN EASTERLY DIRECTION THROUGH THE PAVED PARKING LOT, DRIVE OFF THE PARKING LOT ONTO A GRASS AREA, PROCEED TO THE SOUTHERN PROPERTY LINE OF THE PARK AND ONTO SCHOOL BOARD PROPERTY.
- AS TO PARAGRAPH 4, I BELIEVE THAT THE INTENT OF THE AGREEMENT IS CLEAR THAT THE SCHOOL BOARD HAS AN AFFIRMATIVE RESPONSIBILITY TO RETURN THE TEMPORARY ACCESS AREA TO ITS PRE-USE CONDITION. AS THE TERM OF THE AGREEMENT IS FROM NOVEMBER, 1997, THROUGH DECEMBER 31, 1998, STAFF WILL REQUEST AN EXTENSION OF THE AGREEMENT, AS PROVIDED FOR IN PARAGRAPH 3, SHOULD THE RESTORATION ACTIVITIES NOT BE COMPLETED BY THE SCHOOL BOARD PRIOR TO DECEMBER 31, 1998.
- AS TO PARAGRAPH 6, SHOULD ANY CLAIMS ARISE AS A RESULT OF THE SCHOOL BOARD'S USE OF THIS TEMPORARY CONSTRUCTION ACCESS WHICH ARE NOT RESOLVED BY THE TERMINATION DATE OF THE AGREEMENT, WE WOULD SIMILARLY REQUEST AN EXTENSION OF THE TERM OF THE AGREEMENT.

**APPROVED IN OPEN SESSION**

FEB 03 1998

AG. ACCES PHS LAST REVISED ON 1/28/98 @ 9:43 AM BY: BHW/3725

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? INDICATE "NO" OR "YES" @ RIGHT. (IF "NO," PROCEED TO 1) BELOW; AND IF "YES," PROCEED TO 2) BELOW) Yes

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1) IF "NO" TO ABOVE .

A) PLEASE EXPLAIN BELOW: (SEE ALSO FOLLOWING SECTION 1B) RE: CONTRACT, AGREEMENT, LEASE, ETC.:

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT: N/A

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?  
 ENTIRE MATTER HAS BEEN REVIEWED.

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER **MUST BE ATTACHED** (IF COMMENTS WERE VERBAL, SO INDICATE.)

SUGGESTIONS RELATING TO PARAGRAPHS 4 AND 6 HAVE NOT BEEN INCORPORATED, AS EXPLAINED IN THE AGENDA MEMORANDUM.

ATTACHMENTS: (LIST IN ORDER AS ATTACHED) TWO (2) ORIGINAL, EXECUTED AGREEMENTS WITH GRADING PLAN ATTACHED. ✓ MEMORANDUM FROM D. HOPKINS, DATED 1/12/98. ✓ MEMORANDUM FROM SENIOR ASSISTANT COUNTY ATTORNEY PALMER DATED 1/20/98. ✓	INSTRUCTIONS TO BOARD RECORDS: ONE FULLY EXECUTED ORIGINAL DOCUMENT SHOULD BE SENT TO ALAN PRATHER, ESQ., DYE, SCOTT, PRATHER AND PETRUFF, P.A., 1111 THIRD AVENUE WEST, STE. 300, BRADENTON, FL 34205. COPIES SHOULD BE PROVIDED TO: COUNTY ADMINISTRATOR'S OFFICE, COUNTY ATTORNEY'S OFFICE, AND PARKS AND RECREATION DEPARTMENT.
COST NONE	SOURCE (ACCT# & NAME) N/A
COMMENTS NONE	AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT) N/A

CC: DANNY HOPKINS, DIRECTOR, PARKS AND RECREATION  
 ALAN PRATHER, ESQ.

<REF: A098-20037>

COPIES TO:

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**MANATEE COUNTY GOVERNMENT**

**MEMORANDUM**

**DATE:** January 12, 1997

**TO:** David F. Rothfuss  
Chief Assistant County Administrator

**FROM:** Daniel P. Hopkins, Director  
Parks & Recreation Department *DPH*

**SUBJECT:** **Agreement for Temporary Access to Palmetto High School through Blackstone Park**

RECEIVED

JAN 13 1998

COUNTY ADMINISTRATOR  
MANATEE COUNTY

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I have reviewed a copy of the above mentioned Agreement and believe it is consistent with what was agreed upon with Victor Fossier of the School Board's Facilities/Maintenance and Operations Department.

I recommend the Agreement for submission to the Board.

If you have any questions or if further information is needed, please contact me at extension 5923.

DPH:JFM:nh



RECEIVED

JAN 22 1998

COUNTY ADMINISTRATOR  
MANATEE COUNTY

Office of  
**MANATEE COUNTY  
ATTORNEY**

\* Board Certified City, County & Local Government Law  
† Board Certified Civil Trial

Teddy N. Williams, Jr., County Attorney  
Mark P. Barnebey, Chief Assistant County Attorney\*  
Paul G. Bangel, Senior Assistant County Attorney\*  
William C. Henry, Senior Assistant County Attorney for Risk Management  
Patricia McVoy, Senior Assistant County Attorney\*  
James A. Minix, Senior Assistant County Attorney†  
Mitchell O. Palmer, Senior Assistant County Attorney  
Jeffrey N. Steinsnyder, Senior Assistant County Attorney\*

January 20, 1998

**MEMORANDUM**

**TO:** David Rothfuss, Chief Assistant County Administrator

**THRU:** Teddy N. Williams, Jr., County Attorney *TNW 1/22/98*

**FROM:** Mitchell O. Palmer, Senior Assistant County Attorney *MOP 1/20/98*

**RE:** **PROPOSED AGREEMENT WITH THE SCHOOL BOARD FOR  
TEMPORARY ACCESS THROUGH AND USE OF BLACKSTONE PARK;  
RLS-98-13; RECEIVED JANUARY 16, 1998;  
CAO FILE: 2050-015**

In this Request for Legal Services, you have solicited my review of and written opinion regarding a proposed Interlocal Agreement to be entered into between Manatee County and the Manatee County School Board, allowing for temporary access through and use of a portion of Blackstone Park by the School Board's contractor(s), pursuant to the School Board's ongoing renovation to Palmetto High School. I note that the School Board has already acted to approve and execute this particular Agreement document. The School Board's action occurred on December 15, 1997.

While the Agreement document is basically sound, I have concerns as regards two separate provisions within the document. The opening phrase of Paragraph 4, "Upon the expiration of the term of this Agreement..." would appear to require the School Board to return the access area to its pre-use condition after the expiration of the Agreement. This, of course, raises the issue of whether this obligation on the School Board's part survives the termination of the Agreement. The preferable language would be "Prior to the expiration of the term of this Agreement...."

Office of County Attorney  
1112 Manatee Avenue West, Suite 969, P.O. Box 1000, Bradenton, FL 34206

(941) 745-3750 • fax (941) 749-3089

David Rothfuss  
January 20, 1998  
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The indemnity language of Paragraph 6 is somewhat oddly structured. My first concern is, once again, one of timing. The phrase, "... for the term of this Agreement and any extensions...." would appear to restrict the School Board's indemnity obligation to the one year term of the Agreement. The School Board's indemnity obligations, however, should continue beyond the actual term of the access Agreement, until final resolution of any and all claims. In addition, the indemnity language should preferably include an obligation on the School Board's part to defend the County.

Finally, Exhibit A leaves a portion of this arrangement to the imagination. Am I correct in my interpretation that the contractor's vehicles and equipment will enter Blackstone Park off of 14th Avenue West, proceed in an easterly direction through the paved parking lot, drive off the paved parking lot into a grassy area, and then proceed to the southern property line of the park property and onto the School Board property? Please advise.

Obviously, if you intend to proceed to present this matter to the Board of County Commissioners on February 3, 1998, then the Board will need to make a business decision as to whether to approve and enter into this contractual arrangement as the Agreement document is presently structured. If I can be of any additional assistance in this matter, to include restructuring any provisions of the Agreement document, please advise. Otherwise, this concludes my services pursuant to the above-described Request for Legal Services.

MOP/tlm

cc: Daniel P. Hopkins, Director, Parks and Recreation Department  
Alan H. Prather, Esq.

# Dye, Scott, Prather & Petruff, P.A.

Attorneys-at-Law  
1111 Third Avenue West, Suite 300  
Bradenton, Florida 34205

Stephen R. Dye  
Richard G. Groff<sup>1</sup>  
Samuel S. Munn<sup>2</sup>  
Patricia A. Petruff<sup>3</sup>  
Alan Hardy Prather\*  
Robert L. Scott\*\*

Please Reply To:  
P. O. Drawer 9480  
Bradenton, FL 34206

Tel: 941/748-4411  
Fax: 941/748-1573

\*Board Certified City, County And Local Government Law  
\*\*Board Certified Wills, Trusts And Estate Law

<sup>1</sup>Also Admitted In Colorado  
<sup>2</sup>Also Admitted In South Carolina  
<sup>3</sup>Also Admitted In California

January 8, 1998

RECEIVED

JAN 9 1998

COUNTY ADMINISTRATOR  
MANATEE COUNTY

David Rothfuss, Assistant County  
Administration  
Post Office Box 1000  
Bradenton, FL 34206

Re: School Board of Manatee County; Agreement For  
Temporary Access - Blackstone Park

Dear Mr. Rothfuss:

Please find enclosed, two (2) duplicate originals of the Agreement For Temporary Access Through And Use Of Blackstone Park Between The School Board Of Manatee County, Florida, And The County Of Manatee, Florida, which was approved by the School Board on December 15, 1997. This Agreement is the result of negotiations between School District administrative staff and County staff to address an "after the fact" utilization of the Park for access to Palmetto High School during construction. I am not certain if the Board of County Commissioners has already approved the document in form and concept or if it must still be transmitted to them for action. Regardless, I would request that the matter be handled and when the Agreement has been signed by the Chairman, one of the original duplicates be returned to me for delivery to the School Board.

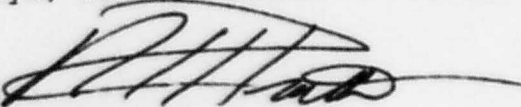
If you have any questions or need additional information, please do not hesitate to contact me. Thank you for your

David Rothfuss, Assistant County  
Administrator  
January 8, 1998  
Page 2

cooperation and I remain,

Very truly yours,

Dye, Scott, Prather & Petruff, P.A.



Alan Hardy Prather

bp

Enclosures

cc: Beverly A. O'Brien, w/o encls.  
Gavin W. O'Brien, w/o encls.  
Karen Cascaddan, w/o encls.  
County Attorney's Office, w/o encls.  
Daniel L. Hopkins, w/o encls.

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School\Correspondence\Rothfuss.ltr.ahp.doc

**Manatee County**  
**CLERK OF THE CIRCUIT COURT**

*R. B. "Chips" Shore*

P.O. Box ~~17000~~<sup>XXXX</sup> • Manatee County Courthouse • Bradenton, Florida 34206 • (813) 749-1800 • FAX (813) 741-4082  
25400

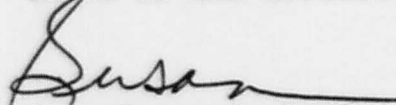
February 4, 1998

Alan Prather, Esquire  
1111 3<sup>rd</sup> Avenue West, Suite 300  
Bradenton, Florida 34205

Dear Alan:

Enclosed for your records is an original executed Agreement for Temporary Access Through and Use of Blackstone Park Between the School Board of Manatee County, Florida and the County of Manatee, Florida, that was approved by the Board of County Commissioners in open session on February 3, 1998.

R. B. Shore  
Clerk of the Circuit Court

  
By: Susan G. Romine  
Deputy Clerk

enclosure

RBS/SGR/pat