

COOPERATIVE AGREEMENT BETWEEN THE CITY OF BOYNTON BEACH AND SOUTH TECH ACADEMY FOR MUTUAL USE OF RECREATION FACILITIES

THIS AGREEMENT, entered into this ____ day of _____, 2007 between THE CITY OF BOYNTON BEACH, a municipal corporation of the State of Florida, ("CITY") and SOUTH TECH ACADEMY, a charter school being operated in Boynton Beach, Palm Beach County, Florida pursuant to a Charter School Agreement between SOUTH TECH ACADEMY and the School Board of Palm Beach County, Florida.

WITNESSETH

WHEREAS, the purpose of this Agreement is to enable CITY, and SOUTH TECH ACADEMY to utilize the facilities of the other and provide a procedure for authorizing such use; and

WHEREAS, CITY and SOUTH TECH ACADEMY recognize the need and benefit for each party to utilize the recreation facilities of the other thereby maximizing the availability of said facilities.

NOW THEREFORE, for and in consideration of the mutual benefits herein contained, the parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. For purposes of this Agreement, the following definitions are provided:
 - A. "Board" means the School Board of Palm Beach County, Florida.
 - B. "Board Facilities" and "Board Facility" mean facilities owned by the School Board of Palm Beach County, Florida at the South Tech Academy site that are made available for public use by the SOUTH TECH ACADEMY and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "Board Facilities" and "Board Facility" shall include gymnasiums; playgrounds; athletic fields, and exterior meeting areas.
 - C. "City Facilities" and "City Facility" mean facilities owned or operated by the CITY that are made available for public use by the CITY and are used primarily for recreational activities, excluding facilities that are leased, licensed or under the contractual control of others. The terms "City Facilities" and "City Facility"

shall include parks; playgrounds, tennis, racquetball and basketball courts; athletic fields, and exterior meeting areas.

D. "Facilities" means the Board Facilities and City Facilities.

E. "Priority of Use" means the priority of uses when there are conflicting requests for the use of a Facility.

For Board Facilities, the Priority of Use shall be as follows:

1. SOUTH TECH ACADEMY activities and programs at South Tech Academy shall have the first priority of use; and
2. CITY Recognized Recreational Provider activities and programs pursuant to this Agreement shall have the next priority use.

For City Facilities, the Priority of Use shall be as follows:

1. CITY Recognized Recreational Provider Group activities and programs shall have the first priority use; and
2. SOUTH TECH ACADEMY activities and programs pursuant to this Agreement shall have the next priority use.

F. "City Recognized Recreational Provider Group(s)" mean those organized recreation groups and organizations identified in the attached Exhibit "A", which may be amended or supplemented from time to time upon the mutual agreement of the SOUTH TECH ACADEMY'S President and the CITY'S Recreation and Parks Director without formal amendment hereto.

3. The parties may place reasonable time period restrictions with respect to the use of the Facilities and shall use the Facilities pursuant to the following provisions:

A. SOUTH TECH ACADEMY agrees to make the Board Facilities available for use by the CITY according to the Priority of Use at no cost or expense to the CITY, except as otherwise provided for in this Agreement. The CITY'S use of the Board Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) South Tech Academy's rules, regulations and policies governing the use of the Board's Facilities; (iii) The terms and conditions of The Charter School Agreement between the SOUTH TECH ACADEMY and Board; and (iv) all applicable local, state and federal laws.

B. The CITY agrees to make available the City Facilities for use by SOUTH TECH ACADEMY according to the Priority of Use at no cost or expense to SOUTH TECH ACADEMY, except as otherwise provided for in this Agreement.

The SOUTH TECH ACADEMY use of the City Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the CITY'S rules, regulations and policies governing the use of the City Facilities; (iii) all applicable local, state and federal laws.

C. The CITY shall submit all requests for use of the Board Facilities in writing in the form attached hereto as Exhibit "B" to the President of SOUTH TECH ACADEMY or his or her designee no less than thirty (30) days prior to the date that the CITY desires to use the Facility. SOUTH TECH ACADEMY shall be responsible for ensuring that written response to the request is provided to the CITY within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response.

D. SOUTH TECH ACADEMY shall submit all requests for use of the City Facilities in writing in the form attached hereto as Exhibit "B" to the CITY'S Recreation & Parks Director no less than thirty (30) days prior to the date that SOUTH TECH ACADEMY desires to use the CITY Facility. The CITY shall be responsible for ensuring that a written response to the request is provided to South Tech Academy within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response.

E. With respect to SOUTH TECH ACADEMY'S use of the City Facilities SOUTH TECH ACADEMY shall, in addition to any other obligation to indemnify the City and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the CITY, agents, officers, elected officials and employees: (a) from and against all claims, actions, liabilities, losses (including economic losses), and costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged negligent act or omission of SOUTH TECH ACADEMY, or anyone directly or indirectly employed by SOUTH TECH ACADEMY, or of anyone for whose acts SOUTH TECH ACADEMY may be liable under this Agreement; (b) from any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual alleged violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of any work under this Agreement; and (c)

from and against claims or actions made by SOUTH TECH ACADEMY'S contractors or other party performing work for or on behalf of SOUTH TECH ACADEMY. The SOUTH TECH ACADEMY'S indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for SOUTH TECH ACADEMY under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney's fees, incurred by the CITY to enforce this provision shall be borne by SOUTH TECH ACADEMY. SOUTH TECH ACADEMY recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the CITY in support of this indemnification in accordance with the laws of the State of Florida. This provision will survive the termination of this Agreement.

F. Upon the execution of this Agreement, SOUTH TECH ACADEMY shall supply the CITY with a Certificate of Insurance as required by this section, naming the CITY as an additional insured. Such Certificate shall provide written notice to City thirty days prior to any cancellation of said insurance. Receipt of such notice shall be considered grounds for termination of this Agreement. SOUTH TECH ACADEMY shall purchase from and maintain coverage from a company or companies lawfully authorized to do business in the State of Florida and rated "B_+" or better in Best's Insurance Guide. In addition, such insurance shall be for no less than the following amounts (subject to review and revision by City of Boynton Beach from time to time): (a) automobile \$1,000,000 per injury and per death; (b) Comprehensive General Liability: \$1,000,000 per occurrence for both personal injury and property damage; and (c) Workers Compensation: Statutory and Employers Liability in the amount of \$ 1,000,000.

G. Each party agrees to provide adequate supervision of its own activities to prevent bodily harm to the users and damage to the Facilities, taking into consideration the types of activities planned, when using the other's Facilities. When aquatic facilities will be included in the Facilities to be utilized, the party using the Facility shall provide supervisors certified in Lifeguard Training in addition to any other supervision required hereunder.

H. In the event the Facilities are damaged, the party using the Facilities of the other party shall promptly notify the other party in writing of the damage and shall

reimburse the other party for the actual costs to repair the damage. Reimbursement shall be made within sixty (60) days of a written request for reimbursement of costs.

I. The Facilities shall be surrendered by the party using the Facilities of the other party in the same condition as they were accepted and shall cause to be removed from the Facilities all waste, garbage and rubbish resulting from such party's use of the Facilities.

4. City Recognized Recreational Providers shall use the Board Facilities pursuant to the following provisions:

A. SOUTH TECH ACADEMY agrees to make the Board Facilities available for use by the City Recognized Recreational Providers and/or the CITY at no cost or expense to the City Recognized Recreational Providers according to the Priority of Use, except as otherwise provided for in this Agreement. Use of the Board Facilities by the City Recognized Recreational Providers shall depend on availability and shall be subject to and in accordance with: (i) the terms and conditions of this Agreement; (ii) the SOUTH TECH ACADEMY's rules, regulations and policies governing the use of Board Facilities; (iii) the terms and conditions of the Charter School Agreement between SOUTH TECH ACADEMY and the Board; and (iv) all applicable local, state and federal laws.

B. Prior to being granted access to any of the Board Facilities, each City Recognized Recreational Provider shall be required to obtain a Facility Use Permit from the CITY. The Facility Use Permit shall, at a minimum, require the City Recognized Recreational Provider to:

1. Provide proof of insurance for such coverage's and amounts as may be required by the Board's Director of Employee Benefits and Risk Management when Board Facilities are to be utilized and name the Board, SOUTH TECH ACADEMY and the CITY as additional insured's;
2. Protect, defend, reimburse indemnify and hold the SOUTH TECH ACADEMY and the City Boynton Beach, their agents, employees and elected officers harmless from and against all claims, liability, expenses, costs, damages and causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising from or in anyway connected

to the City Recognized Recreational Provider's use of the Board Facilities;

3. Provide adequate supervision of its own activities to prevent bodily harm to the users or damage to the Board Facilities, taking into consideration the types of activities planned;
 4. Return the Board Facilities in the same condition as they were accepted and to remove all waste, garbage and rubbish resulting from the City Recognized Recreational Provider's use of the Board Facilities; and
 5. Notify SOUTH TECH ACADEMY of any damage to the Board Facilities resulting from the City Recognized Recreational Provider's use of the Board Facilities and reimburse the South Tech Academy for the actual costs to repair the damage.
- C. The Facility Use Permit issued by the CITY shall also indicate that the Facility Use Permit may be revoked or suspended by the CITY and that SOUTH TECH ACADEMY may deny access to the Board Facilities for failure to comply with the terms and conditions of the Facility Use Permit.
- D. The City Recognized Recreational Providers shall be required to submit all requests for use of the Board Facilities in writing in the form attached hereto as Exhibit "B" to the CITY's Recreation & Parks Director no less than thirty (30) days prior to the date the City Recognized Recreational Provider desires to use the Board Facility. The CITY'S Recreation & Parks Director shall coordinate scheduling of the use of the Board Facility with the President of SOUTH TECH ACADEMY or his or her designee. SOUTH TECH ACADEMY shall be responsible for ensuring that a written response to the request is provided to the CITY'S Recreation & Parks Director within fifteen (15) days of the date of the request. In the event a request is denied, the reason for denial shall be stated in the written response.
- E. Notwithstanding any provision of this Agreement to the contrary, SOUTH TECH ACADEMY shall not be obligated to make the Board Facilities available for use by a City Recognized Recreational Provider for tournaments or any events where admission or concession fees or

charges will be collected or imposed by the City Recognized Recreational Provider.

5. The sale, use or possession of alcoholic beverages or controlled substances at any of the Facilities sites is strictly prohibited.
6. In the event an issue arises which cannot be resolved between the SOUTH TECH ACADEMY Principal and the City of Boynton Beach Recreation & Parks Director regarding the use or availability of a Facility, the dispute shall be referred to the SOUTH TECH ACADEMY President and the City Manager who shall both make a good faith effort to resolve the dispute.
7. Neither party shall be required to make any improvements or repairs to the Facilities as a condition of use of the Facilities by the other party or City Recognized Recreational Providers. The parties and City Recognized Recreational Providers shall accept the Facilities in their "As is", "Where is" condition. The parties acknowledge and agree that neither party has made any warranties or representations to the other party regarding the Facilities, including, but not limited to, any representations or warranties regarding the suitability of the Facilities for use by the other party or City Recognized Recreational Providers.
8. Notwithstanding any provision of this Agreement to the contrary, the use of the Facilities by either of the parties or the City Recognized Recreational Providers shall only amount to a license to use the Facilities on a non-exclusive basis, which license shall be revocable by the party licensing the use for any reason whatsoever. The parties agree that nothing in this Agreement shall be construed as granting either party or the City Recognized Recreational Providers any title, interest or estate in the Facilities.
9. The parties agree that, in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure the default within the thirty (30) day cure period, the non-defaulting party shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement and seek actual damages, if any.
10. All notices herein required shall be in writing. Any such notice shall be deemed sufficiently delivered or served if hand delivered or deposited in the U.S. Mail:

As to CITY: Kurt Bressner, City Manager
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, Florida 33425-0310

With copy to: Wally Majors, Recreation and Parks Director
City of Boynton Beach
100 East Boynton Beach Blvd.
Boynton Beach, Florida 33425-0310

As to BOARD: James R. Kidd, President,
South Tech Academy
1300 SW 30th Avenue
Boynton Beach, FL 33426

11. This Agreement may not be assigned, in whole or in part, without the prior written consent of SOUTH TECH ACADEMY and the CITY.
12. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by either party: (i) without cause upon thirty (30) days prior written notice to the other party or (ii) with cause upon the expiration of the thirty (30) day cure period provided for in Section 11 above. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall automatically terminate and be of no further force and effect upon the expiration or earlier termination of the Charter School Agreement between SOUTH TECH ACADEMY and the Board.
13. Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.
14. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, Florida.

15. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.
16. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
17. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
18. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Agreement.
19. Except as otherwise provided for in this Agreement, this Agreement may be modified and amended only by written instrument executed by the parties hereto.
20. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
21. Neither party shall be considered the author of this Agreement since the parties have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.
22. This Agreement shall become effective when signed by both parties hereto (hereinafter "Commencement Date"). The term of this Agreement shall be for a period of two (2) years and shall be automatically renewed up to two (2) additional consecutive one (1) year terms, unless it is terminated by either party in accordance with the termination provisions of this Agreement.

Date: April 12, 2007

SOUTH TECH ACADEMY

By: Nom S. Blesh
Chair, Governing Board

Date: 4-18-07

CITY OF BOYNTON BEACH, FLORIDA

By: Kurt Bressner

KURT BRESSNER
CITY MANAGER
Its: BOYNTON BEACH, FL

ATTEST:

By: Janet M. Praerito
City Clerk

Approved as to form and legal sufficiency

By: J. Cleveland
Office of the City Attorney

JOINDER AND CONSENT

The School Board of Palm Beach County, Florida, ("School Board") the owner of the Real Property at 1300 SW 30th Avenue, Boynton Beach, FL 33426 which Real Property is operated by South Tech Academy, does hereby join in and consent to the *Cooperative Agreement Between the South Tech Academy and the City of Boynton Beach for the Mutual Use of Facilities* (the "Cooperative Agreement"), and further agrees that the execution of the Cooperative Agreement shall not be considered an event of default, notwithstanding any provision prohibiting subleases, or other uses of the Real Property that may exist in the Charter School Agreement between the School Board and South Tech Academy.

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

BY _____
William G. Graham, Chairman

Board Approval Date: _____

BY _____
Arthur C. Johnson, Ph.D., Superintendent

REVIEWED AND APPROVED AS TO
LEGAL FORM

School Board Attorney

Date: _____

EXHIBIT "A"
CITY RECOGNIZED RECREATIONAL PROVIDER GROUPS

Boynton Beach Little League
Boynton Beach Police Athletic League (PAL)
City of Boynton Beach Sponsored Events

**THE CITY OF BOYNTON BEACH
SOUTH TECH ACADEMY
COOPERATIVE AGREEMENT- FACILITY REQUEST FORM**

<hr/> Date	<hr/> Contact Person	<hr/> School Name (if applicable)
<hr/> Phone Number	<hr/> Fax Number	<hr/> Other Contact Number
<hr/> Address	<hr/> Village	<hr/> State/ZIP

FACILITY REQUEST:

<hr/> Choice #1	<hr/> Choice #2
<hr/> Activity	<hr/> Age Group

Estimated Attendance:
Participants: _____ Spectators: _____ Total: _____

Mark appropriate day(s) facility will be needed:

☐ Monday ☐ Tuesday ☐ Wednesday ☐ Thursday ☐ Friday ☐ Saturday ☐ Sunday

Date(s): _____

Time(s): From: _____ **am/pm** **to** _____ **am/pm**

☐ New Request
☐ Repeat Request:
Date and location of previous use: _____

Other pertinent information (as necessary): _____

<hr/> <input type="checkbox"/> Requesting Principal	<hr/> Date
<hr/> <input type="checkbox"/> Director of Recreation Services	

.....
☐ Approve ☐ Disapprove
Reason if disapproved: _____

<hr/> <input type="checkbox"/> Principal	<hr/> Date
<hr/> <input type="checkbox"/> Director of Recreation Services	