



AGENDA	
Section	UNFINISHED BUSINESS
Item No.	V A

Meeting Date
March 3, 2016

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Memorandum of Understanding With Cocoa Expo Sports Center, LLC.
DEPT/OFFICE:	Stockton Whitten, County Manager, (321) 633-2010 Scott L. Knox, County Attorney, (321) 633-2090 Matthew Soss, Assistant County Attorney, (321) 633-2090

**Requested Action:**  
 Staff requests that the Board of County Commissioners approve the attached Memorandum of Understanding with Cocoa Expo Sports Center, LLC, and authorize the execution of said Memorandum by the Chairman.

**Summary Explanation & Background:**

In March 2015, the Board of County Commissioners and Cocoa Expo agreed to a Stipulated Order on Motion For Temporary Injunction and on or about March 23, 2015, an order was entered prohibiting Cocoa Expo from holding events at, making public use of, or occupying, or allowing the occupancy of any structure at the Cocoa Expo Sports Center, unless and until the County had issued any required Certificate of Completion, Certificate of Occupancy, or otherwise has provided prior express written approval of said event, use, or occupancy. Both parties agreed that a violation of the Order was enforceable with the Court's contempt powers.

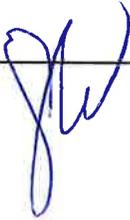
On or about March 31, 2015, Cocoa Expo requested that the Board allow it to use four (4) ball fields in the northeast portion of the Property and the ball field at the stadium, even though such use would then constitute a violation of the BDP, CUP, and various Brevard County codes, including but not limited to Sec. 62-1901(d)(5). The Board suspended enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements for a period of forty-five (45) days.

Subsequently, the Board, on or about May 12, 2015, entered into an MOU with Cocoa Expo, allowing Cocoa Expo to operate while finishing site development. This May 12 MOU was extended several more times until it ultimately expired in December 2015. Since December, Staff has met with Cocoa Expo in an attempt to assist Cocoa Expo in completing the remaining site improvements. It is Staff's understanding that Cocoa Expo will be attempting to amend its BDP in order to decrease the initial bonding requirements. The attached MOU will allow Cocoa Expo to continue to operate until September 9, 2016, while it seeks an amendment to its BDP.

**Clerk to the Board Instructions:**

**Exhibits Attached:**

<b>Contract /Agreement (If attached):</b>	<b>Reviewed by County Attorney</b>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten 	Assistant County Manager	Scott Knox, County Attorney / 5290 



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

March 4, 2016

MEMORANDUM

TO: Scott Knox, County Attorney Attn: Matthew Soss

RE: Item V.A., Amendment to Memorandum of Understanding with Cocoa Expo Sports Center, LLC

The Board of County Commissioners, in regular session on March 3, 2016, executed Memorandum of Understanding with Cocoa Expo Sports Center, LLC, allowing Cocoa Expo to continue to operate until September 9, 2016, while it seeks an amendment to its Binding Development Plan. Enclosed are two executed Memorandum of Understandings.

**Upon execution by Cocoa Expo Sports Center, LLC, please return a fully-executed Memorandum of Understanding to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

✓ Tammy Rowe, Deputy Clerk

Encls. (2)

cc: County Manager  
Contracts Administration



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Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: County Manager  
Contracts Administration

2016 APR 14 AM 8:46  
FINANCE DEPT.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this   3   day of March, 2016, by and between Brevard County, Florida ("Brevard County"), a political subdivision of the State of Florida, and Cocoa Expo Sports Center, LLC ("Cocoa Expo"), a Florida limited liability company doing business in the State of Florida, with its principal address at 500 Friday Road, Cocoa, Florida, 32926.

WHEREAS, Cocoa Expo is the owner of the property and improvements commonly known as the Cocoa Expo Sports Center (hereinafter referred to as the "Property") in Brevard County, Florida, and Brevard County is authorized to regulate development of the Property;

WHEREAS, Cocoa Expo made applications to the Brevard County Board of County Commissioners (the "Board") for Small Scale Plan Amendments to change the Future Land Use Map Designation of the Property, changes in the zoning classifications of the Property, and for Conditional Use Permits (CUPs) for an Outdoor Entertainment and Amusement Enterprise and for On Premises Consumption of Alcoholic Beverages;

WHEREAS, the Board granted the applications in part, subject to Cocoa Expo's entry into an agreed upon binding development plan and a number of stipulations made by Cocoa Expo, as set forth in Brevard County Board of County Commissioners Resolution No. 12PZ-0044(A) and (B), as modified by 14PZ-

00021 (the "Zoning Resolutions"), in order to mitigate negative impacts on abutting land owners and affected facilities and services;

WHEREAS, Cocoa Expo entered into a binding development plan with Brevard County on November 13, 2012, which was recorded in Official Records book 6738 at page 2370 of the Public Records of Brevard County, Florida, is incorporated herein by reference, and which, as amended, shall be referred to as the "BDP";

WHEREAS, the parties entered into an amendment to the BDP on or about December 16, 2014, which amendment was recorded in Official Records book 7270 at page 218 of the Public Records of Brevard County, Florida, and is incorporated herein by reference;

WHEREAS, on or about March 31, 2015, Cocoa Expo requested that the Board allow it to use four (4) ball fields in the northeast portion of the Property and the ball field at the stadium, even though such use would then constitute a violation of the BDP, CUP, and various Brevard County codes, including but not limited to Sec. 62-1901(d)(5), Brevard County Code of Ordinances;

WHEREAS, on or about March 31, 2015, the Board suspended enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements for a period of forty-five (45) days;

WHEREAS, on or about May 12, 2015, the Board granted Cocoa Expo's request to extend the suspension of enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements;

WHEREAS, on or about September 1, 2015, the Board granted Cocoa Expo's request to extend the suspension of enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements;

WHEREAS, on or about October 6, 2015, the Board granted Cocoa Expo's request to extend the suspension of enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements, subject to the terms and conditions set forth in the May 12, 2015 MOU through December 5, 2015;

WHEREAS, as Cocoa Expo plans to amend its BDP and CUP, on or about March 9, 2016, the Board granted Cocoa Expo's request to extend the suspension of enforcement of the BDP, CUP, Zoning Resolutions and specified code requirements, subject to the terms and conditions set forth herein;

WHEREAS, the Property has, under various ownerships and not continuously, operated as a recreational and exposition complex in Brevard County, Florida in excess of fifty (50) years, including serving from 1964-1984 as a major league baseball spring training facility for the Houston Astros; and

WHEREAS, Cocoa Expo desires to operate the facility as an amateur youth sports facility while ongoing site development is completed.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, constituting good and valuable consideration, the parties hereto agree as follows:

1. The Board's suspension of enforcement of BDP, CUP, Zoning Resolution and specified code requirements is hereby extended until September 9, 2016, subject to the terms and conditions set forth herein. No regulation relating to life safety or health matters is suspended. The Board's temporary suspension of enforcement shall not be deemed a waiver of any condition, requirement or provision of the BDP, CUP, Zoning Regulations, approved site plan or code, and shall not be construed to be an amendment or modification of any of the foregoing.

2. Cocoa Expo understands that it must work expeditiously in order to obtain an amendment to its BDP prior to September 9, 2016.

3. On or before the September 9, 2016, Cocoa Expo shall:

a. post bonds covering all outstanding deficiencies and remaining work for Phase 1a (12SP-00320), including required landscaping and buffers, to guarantee such work is completed within an eighteen (18) month time period, unless such requirements are amended or deleted through an approved revised Binding Development Plan; or

b. in lieu of posting the bonds referenced in subsection a. above, construct, install, complete and maintain all improvements required by the approved site plan for Phase 1a (12SP-00320), as may be amended by the parties;

c. request and pass all necessary inspections; however additional inspections shall not be required for approvals granted prior to entry of this Amended Memorandum of Understanding. Additional inspections may be required upon a change of designation or use.

d. request and obtain a certificate of completion for Phase 1a (12SP-00320), which shall not be withheld in violation of a clear legal duty; and

e. request and obtain final certificates of occupancy on all structures within Phase 1a (12SP-00320), which shall not be withheld in violation of a clear legal duty. No final certificate of occupancy shall be issued until Cocoa Expo has provided to Brevard County the Performance Bond required by Paragraph 11 of the BDP, unless such condition is removed pursuant to an approved amendment to the BDP.

f. all inspections and approvals obtained prior to the Memorandum of Understanding shall stay in effect and Cocoa Expo need not seek reapproval or reinspection of these previously obtained approvals to obtain final certificates of occupancies. Additional inspections may be required upon a change of designation or use.

4. On or before April 9, 2016, Cocoa Expo shall:
  - a. replace the sidewalk within the ROW (two panels) at Pond 5;
  - b. properly install the drop inlets within the Friday road right-of-way. These inlets must be chained and have lifting loops;
  - c. install all signs on a 2 inch square post and utilize appropriate hardware, including, but not limited to, metal fender washers;
  - d. properly finish the interior of all drainage structures, both off site and surrounding the Young's property.

5. Prior to Cocoa Expo's receipt of a certificate of occupancy for the stadium building, Cocoa Expo may occupy the outside seating area and outdoor portion of the stadium only, subject to the following conditions:

- a. In order to comply with NFPA 72:7.4.2 (2007 Edition) and provide stadium occupants (including spectators on the field) with a safe environment, Cocoa Expo management shall provide the Fire Marshal with written notice of any events, other than baseball or softball, being held in the stadium. The written notice shall be provided at least twenty-one (21) days prior to the event. The Fire Marshal shall determine if one or more Brevard County fire inspectors are required to prepare for the event and/or to be at the event in order to ensure the ambient sound levels can be manually reduced to acceptable levels in the event of an emergency. Any cost for the fire inspectors shall be paid in advance by Cocoa

Expo in accordance with the BCFR fee resolution, which is currently Fifty Dollars (\$50.00) per hour for each fire inspector with a three (3) hour minimum per inspector.

6. While this Memorandum of Understanding is in effect, Cocoa Expo may request and obtain a temporary certificate of occupancy, or a final certificate of occupancy in accordance with any approved revised BDP, for any building in Phase 1a (12SP-00320) which has passed final building and fire inspections. Any temporary certificate of occupancy issued for any building shall expire no later than midnight of September 9, 2016. Any temporary certificate of occupancy that has been issued prior to this Memorandum of Understanding will continue to stay in effect until midnight of September 9, 2016. No buildings or structures may be used or occupied unless a certificate of occupancy, temporary or permanent, has been issued in writing by the Brevard County Building Official.

7. The County Commission imposed prohibition against baseball games after daylight hours shall be lifted. The landscape buffering adjacent to residential properties is in place and complete. Cocoa Expo shall ensure that such buffering remains in place. Any nighttime games and lighting shall be subject to applicable performance standards. If at any time said buffers are found to be deficient by Brevard County Natural Resources Department, the use of the ball fields shall be strictly prohibited.

8. Until such time as the final Certificate of Completion has been approved for Phase 1a (12SP-00320), in accordance with any approved revised BDP, no more than Fifteen Hundred (1,500) people may be present on the Property at any one time, inclusive of all guests, attendees, players, patrons, employees, staff, contractors, invitees, etc. (any natural person), provided that at no time shall the number of spectators, inclusive of all guests, attendees, patrons, invitees, etc., on the property exceed the constructed available parking. The available parking shall be derived by using a formula of one (1) parking space per three (3) spectators. Upon approval of the Certificate of Completion for Phase 1a (12SP-00320), the number of attendees shall be in accordance with the terms and conditions of the Binding Development Plan, as may be amended.

9. Cocoa Expo may use the south ball fields provided that the currently installed and completed landscape buffers adjacent to the Young Property remain in place in compliance with landscape requirements of the BDP, unless amended. If at any time said buffers are found to be deficient by Brevard County Natural Resources Department, the use of those ball fields shall be strictly prohibited.

10. Phase 2 (14SP-00170) is not currently approved. Phase 2 (14SP-00170) parking, parking on the west side of Friday Rd., and parking along Friday Rd. by guests, attendees, players, patrons, employees, staff, contractors, invitees, etc. (any natural person), shall not be used unless authorized in an approved revised BDP, or

otherwise authorized in writing in advance by the Brevard County Board of County Commissioners.

11. Cocoa Expo shall indemnify and hold harmless Brevard County and its agents, employees, and elected officials from and against any and all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the act or omission of Cocoa Expo, or anyone directly or indirectly employed by Cocoa Expo, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The parties acknowledge that specific consideration has been exchanged for this provision.

12. Cocoa Expo shall, at its own expense, keep in force and at all times maintain during the term of this Memorandum of Understanding, General Liability Insurance issued by responsible insurance companies and in a form acceptable to Brevard County, with combined single limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage per occurrence, Automobile Liability Insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limits for Bodily Injury and Property Damage per accident, and full and complete Workers' Compensation Coverage, as required by Florida law, shall be provided. Cocoa Expo shall provide Brevard County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to Brevard County. Said Liability Policies shall provide that Brevard County be an additional insured, and proof of such shall be provided to Brevard

County on or before March 9, 2016. Brevard County shall be notified in writing of any reduction, cancellation or change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to Brevard County and licensed and authorized under the laws of the State of Florida.

13. Time is of the essence and material to this agreement. No extensions of any deadlines herein shall be granted for any reason.

14. Brevard County staff may enter the Property and conduct inspections at any time during games, events, construction activity, or when the Property is otherwise open to members of the public.

15. Active construction, construction equipment, and construction materials are to be isolated from guests, attendees, players, spectators, and any member of the public.

16. In the event that Cocoa Expo fails to strictly and timely comply with and adhere to any condition set forth herein above, this suspension of enforcement of BDP, CUP, Zoning Resolutions, specified code requirements, and the existing Stipulated Injunction shall terminate immediately. At such time, any use or occupancy of the Property, any portion thereof, or structure thereon by Cocoa Expo, except in full compliance with all requirements of the BDP, CUP, Zoning Resolutions, and all applicable codes and laws, shall constitute a violation of the Stipulated Injunction enforceable by the contempt powers of the Court. Brevard

County reserves the right to seek any and all remedies, legal, equitable or otherwise, which may be available.

17. Both parties agree that they will cooperate with one another in good faith in implementing the terms and conditions of this Agreement. Cocoa Expo shall use its best good faith and reasonable efforts to make timely and reasonable requests for inspections or approvals. Brevard County will use its best good faith and reasonable efforts to respond to such requests.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:

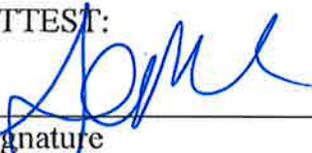
  
\_\_\_\_\_  
Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA**

By:   
\_\_\_\_\_  
Jim Barfield, Chairman

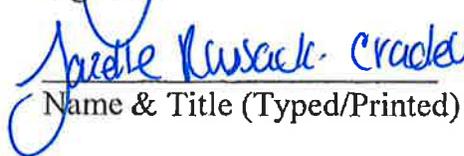
As approved by the Board on March 3, 2016

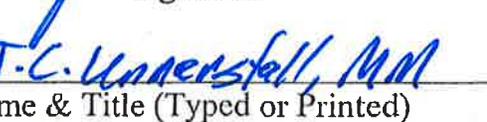
ATTEST:

  
\_\_\_\_\_  
Signature

**COCOA EXPO SPORTS CENTER, LLC**

By:   
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Name & Title (Typed/Printed)

  
\_\_\_\_\_  
Name & Title (Typed or Printed)

  
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Date