

Meeting Date
08/23/2016



AGENDA	
Section	CONSENT
Item No.	II, B, 4

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	License Agreement RE: Access across privately owned driveway – District 1		
	There are no impacts to General Revenue Funds or EEL Program funds.		
DEPT/OFFICE:	Community Services Group / Parks and Recreation Department		
Requested Action:	It is requested that the Board of County Commissioners approve a License Agreement granting the County access to County owned and managed property across a privately owned driveway.		
Summary Explanation & Background:	<p>John and Glenda VanGilder own property south and adjacent to the Scottsmoor Flatwoods Sanctuary which is managed by the Environmentally Endangered Lands Program (EEL).</p> <p>Upon Board approval, the License Agreement will authorize County staff ingress and egress across the VanGilder's private property, including any gates restricting access to the driveway, to access the Sanctuary from the southern end, for maintenance and management purposes.</p> <p>The term of this Agreement, and the rights granted, shall be effective upon the date of execution by the County and shall continue for a period of ten (10) years with automatic renewals for one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term. The VanGilder's have approved and signed the License Agreement.</p> <p>Mike Knight, EEL Program Manager (321) 255-4466 mike.knight@brevardfl.gov</p>		
Clerk to the Board Instructions:			
Exhibits Attached:	Property Access License Agreement (3)		
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
		PR <input type="checkbox"/>	
County Manager	Assistant County Manager,	Jack Masson, Parks & Recreation Department Director jack.masson@brevardparks.com; 633-2046	
Stockton Whitten	Assistant County Manager, Venetta Valdengo		



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

August 24, 2016

MEMORANDUM

TO: Jack Masson, Parks and Recreation Director Attn: Mike Knight

RE: Item II.B.4., License Agreement for Access Across Privately Owned Driveway

The Board of County Commissioners, in regular session on August 23, 2016, executed License Agreement granting the County access to County-owned and managed property across a privately owned driveway in Scottsmeer. Enclosed are two fully-executed Agreements.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cm

Encls. (2)

cc: Contracts Administration
Finance
Budget

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: VanGilder License Agreement	
2. Fund/Account #: 1610/300114	Division Name: EEL PROGRAM
4. Contract Description: VanGilder License Agreement	
5. Contract Monitor: JENNY ASHBURY	6. Mail Stop #: 74
7. Dept./Office Director: JACK MASSON	8. Contract Type:
ACTION DATE: PLEASE CALL JENNY 321-369-8169 WHEN ORIGINALS AND AO 29 ARE READY	ACTION REQUIREMENT: Need complete data

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	x		MK	02/15/2016
Risk Management	<u> </u>	<u> </u>	<u> </u>	<u> </u>
County Attorney	<u> </u>	<u> </u>	<u> </u>	<u> </u>

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

RECEIVED

llc
APR -7 2016

BREVARD COUNTY EEL PROGRAM
ADMINISTRATION

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

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	<u>YES</u>	<u>NO</u>		
User Agency	x		MK	02/15/2016
Risk Management	<u>X</u>	_____	<u>JLJ</u>	<u>4/28/2016</u>
County Attorney	_____	_____	_____	_____

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AO-29: EXHIBIT I

PROPERTY ACCESS LICENSE AGREEMENT

THIS AGREEMENT is dated this 23 day of August, 2016, BY and BETWEEN JOHN E. VANGILDER and GLENDA E. VANGILDER (hereafter referred to as "Licensor") and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "Licensee")

WHEREAS, the Licensor owns property in Brevard County, Florida, as depicted in Exhibit "A", attached hereto and made a part of by reference (hereafter referred to as the "Property"); and

WHEREAS, the Licensee is the owner of certain parcel of property (hereafter referred to as the "Licensee's Property"), which is adjacent to the Licensor's Property; and

WHEREAS, as highlighted in yellow in Exhibit "A", a dirt driveway (hereafter the "driveway") exists on the Property, which runs east west on the north side of the Property, south of the Licensee's Property; and

WHEREAS, Licensee has expressed an interest in being able to access this privately owned driveway through the owned Property by use of the driveway, as shown on Exhibit "A".

NOW THEREFORE, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.

2. **Property.** This Agreement relates to the land owned by the Licensor and identified in the legal description set forth in Exhibit "B" to this Agreement (the "Property"), which "Exhibit B" is integral to and constitutes a part of this Agreement.

3. **License.** The Licensor hereby grants the Licensee a non-exclusive, personal and revocable license (hereafter the "License") solely for the purpose of allowing Licensee ingress and egress to County Property by use of the driveway highlighted in yellow on the aerial photograph attached as "Exhibit A". This License shall not be interpreted or construed to grant any right of ingress over, egress over or use of the trail by any other person, third party or property owner other than the Licensee. This Property Access License Agreement shall extend to include invited guests of the licensee. Licensee shall accompany and be present with any and all guests that Licensee chooses to invite to the Licensee's property. Licensee agrees to restrict any and all guests to the terms of this agreement. This License shall not be construed or interpreted as granting or attempting to grant the Licensee ingress or egress across property owned by any other person or legal entity.

4. **Right of Access.** The Licensee shall be entitled to enter the Property and use the driveway for such ingress and egress purposes, subject to and in accordance with the Licensor's rules and regulations governing such access, as well as all applicable laws and regulations promulgated by the State of Florida or its agencies. Licensor shall allow the Licensee access to the driveway, including any gate restricting access to the driveway. Neither this License nor the Licensee's use of the driveway for ingress and egress to County lands shall

constitute a basis for obtaining a building permit for the construction of any improvements on the Licensee's lands. This agreement is intended solely for the expedited resolution of ingress and egress to Licensee's property, and in no way interferes with Licensee's right to apply for and acquire a legal easement over the Property at some date in the future. In no way does this agreement extinguish any existing legal right Licensee currently has concerning access to his property.

5 No Other Activity. The Licensee may not enter upon or engage in any other activity upon the Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the Property. Licensee is hereby granted access to County property via motorized vehicle. Licensee shall not invite any other person or entity to bring or use any type of motorized vehicle upon the driveway or upon any other portion of the Property. Licensee further agrees to close any gate used by the Licensee to enter or exit the driveway.

6. Authority; maintenance. The Licensor represents that it has the right to grant the license granted to the Licensee herein. The Licensor shall not bear any responsibility for maintenance of the Property and shall have no duty to keep the Property in a condition passable by Licensee. Licensee shall not undertake any maintenance or improvement of the Property without the express written permission of Licensor, which permission may be withheld in Licensor's sole discretion. Licensee shall have the right, after obtaining written approval from Licensor's, to maintain but not improve the driveway depicted on Exhibit A. Maintenance includes, trimming of trees and brush that restrict travel along the driveway and removal of tire ruts and tire tracks so as to keep the driveway in condition to travel on it. No maintenance may be conducted outside of the boundaries of the driveway.

7 Term. The term of this Agreement, and the rights granted herein, shall be effective upon the date of execution of this License by the parties and shall continue for a period of ten (10) years thereafter ("the Term"). The term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term that the License is revoked for any of the reasons recited in paragraph 8.

8. Revocation. This License may be revoked or terminated by the Licensor before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee if the Licensee:

- a. Obtains alternate access for ingress and egress to his Property;
- b. Violates any law, rule, regulation applicable to the Property, as promulgated by the State of Florida or any of its agencies; the Licensor; or any other governmental agency with jurisdiction;
- c. Engages in any hunting activity on the Licensor's Property;
- d. Discharges any firearms on or across any portion of the Licensor's Property;
- e. Conducts any illegal activity on the Licensor's Property;
- f. Enters upon or conducts activity upon the Licensor's Property for uses other than use of the driveway for ingress and egress, unless such entry or activity is otherwise allowed under paragraph 4 above;
- g. Violates any term, provision or condition of this License Agreement;

9. **No Recording.** This License shall not be recorded in the official records of Brevard County, Florida by either party.

10. **No Interest in the Property.** This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the Licensor's Property.

11. **Assignment.** This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity.

12. **Acceptance.** This License Agreement constitutes the entire agreement between the Licensor and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.

13. **Venue and Governing Law.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted and construed according to the laws of the State of Florida

14. **Counterparts.** This License Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by facsimile machine and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this Agreement.

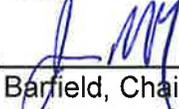
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

ATTEST:



Scott Ellis, Clerk

LICENSEE:
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY: 

Jim Barfield, Chairman
Brevard County Commission

As approved by the Board on: 8-23-2016

Reviewed for legal form and content:



Christine Lepore, Assistant County Attorney



Legend

-  Licensee Property
-  Licensor Property
-  Driveway

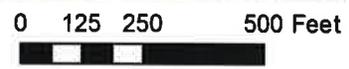


EXHIBIT "A"

EXHIBIT "B"

Legal Description

From the South West corner of Section 3, Indian River Park Subdivision; as recorded in Plat Book 2, Page 33 of the Public Records of Brevard County, Florida, run Northerly along the West line of said Section 3, and on a relative bearing of N 16°57'36" W for a distance of 2520.0 feet to the Point of Beginning; thence continue N 16°57'36" W for a distance of 100.0 feet to a point; thence run N 79°01'04" E for a distance of 438.0 feet to a point; thence run S 16°57'36" E for a distance of 100.0 feet to a point; thence run S 79°01'04" W for a distance of 438.0 feet to the Point of Beginning; reserving therefrom the Westerly 25.0 feet for future access R/W purposes. Said land situate, lying, and being in Brevard County, Florida.