

Meeting Date
<b>November 15, 2016</b>



AGENDA	
Section	Consent
Item No.	<b>II.A.4</b>

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

<b>SUBJECT:</b>	Approval Re: Termination of Use Agreement between Brevard County and A. Duda & Sons, Inc. for easement rights over property at the South Central Waste Water Treatment Facility – District 4 (Fiscal Impact: None)
<b>DEPT/OFFICE:</b>	Public Works Department / Land Acquisition Section / Utility Services Department

**Requested Action:**  
 It is requested that the Board of County Commissioners approve and accept and if accepted, authorize the Chairman to execute the Termination of Use Agreement between Brevard County and A. Duda & Sons, Inc.

**Summary Explanation & Background:**  
 The subject property is located in Section 07, Township 26 South, Range 36 East.  
  
 The County and A. Duda & Sons, Inc. (Duda) entered into a Use Agreement dated November 1, 1988, whereby Duda agreed to allow the County, and granted the County easement rights in connection, therewith, to construct, locate, operate, and maintain a water reuse and wastewater effluent disposal system over, under, and across certain property owned by Duda in exchange for the easement property and other property of Duda to be the recipient of wastewater effluent from the Wastewater System. The initial term of the Use Agreement expires November 1, 2018; however, the Wastewater System is no longer in operation and the County and Duda now desire to terminate the Use Agreement.

**Fiscal Impact:**    FY 2016-2017 : No impact  
                               **FY 2017-2018 : No impact**

**Clerk to the Board Instructions:** Forward the original executed Termination of Use Agreement and the Board approval memo to Department.

**Exhibits Attached:** Original Termination of Use Agreement

**Contract /Agreement (If attached): Reviewed by County Attorney**    Yes     No     PR

County Manager	Assistant County Manager	Department Director / Extension
		 John Denninghoff / 57202
Stockton Whitten	Assistant County Manager	 Jim E. Helmer / 52091



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

November 16, 2016

M E M O R A N D U M

TO: John Denninghoff, Public Works Director

RE: Item II.A.4., Termination of Use Agreement with A. Duda & Sons, Inc. for Easement Rights over Property at the South Central Waste Water Treatment Facility

The Board of County Commissioners, in regular session on November 15, 2016, executed and authorized the Termination of Use Agreement between A. Duda & Sons, Inc. Enclosed is fully-executed Termination of Use Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Utility Services Director  
Contracts Administration  
Asset Management  
Land Acquisition

**BOARD OF COUNTY COMMISSIONERS**

AGENDA: TERMINATION OF USE AGREEMENT BETWEEN BREVARD COUNTY AND A. DUDA & SONS, INC. – SOUTH CENTRAL WASTE WATER TREATMENT FACILITY – DISTRICT 4

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION/ UTILITY SERVICES DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DJS</u>	_____	<u>10/19/16</u>
UTILITY SERVICES DEPT Jim E. Helmer, Director	<u>Jeh</u>	_____	<u>10/20/16</u>
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>see attached</u>	_____	<u>10/20/16</u>
PUBLIC WORKS John Denninghoff, Director	<u>JDS</u>	_____	<u>10/31/16</u>

AGENDA DUE DATE: October 31, 2016 for the November 15, 2016 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

**PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.**

**THANK YOU.**

**BOARD OF COUNTY COMMISSIONERS**

AGENDA: TERMINATION OF USE AGREEMENT BETWEEN BREVARD COUNTY AND A. DUDA & SONS, INC. – SOUTH CENTRAL WASTE WATER TREATMENT FACILITY – DISTRICT 4

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LAND ACQUISITION Dan Jones, Supervisor	<u>DJS</u>	_____	<u>10/19/16</u>
UTILITY SERVICES DEPT Jim E. Helmer, Director	_____	_____	_____
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>[Signature]</u>	_____	<u>10/20/2016</u>
PUBLIC WORKS John Denninghoff, Director	_____	_____	_____

AGENDA DUE DATE: October 31, 2016 for the November 15, 2016 Board meeting

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THANK YOU.

Prepared by and return to:

Benjamin E. Wilson, Esq.  
The Viera Company  
7380 Murrell Road, Suite 201  
Viera, FL 32940  
Tel: (321) 242-1200

## TERMINATION OF USE AGREEMENT

THIS TERMINATION OF USE AGREEMENT (this "**Termination**") is made and entered into as of NOVEMBER 15 \_\_\_\_\_, 2016 (hereinafter referred to as the "**Effective Date**"), by and between BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "**County**"), and A. DUDA & SONS, INC., a Florida corporation ("**Duda**").

### RECITALS:

WHEREAS, the County and Duda entered into that certain Use Agreement dated November 1, 1988 whereby Duda agreed to allow the County, in connection therewith, to construct, locate, operate, and maintain a water reuse and wastewater effluent disposal system (the "**Wastewater System**") over property of Duda set forth therein in exchange for property of Duda to be the recipient of wastewater effluent from the Wastewater System (collectively, the "**Use Agreement**"); and

WHEREAS, initial term of the Use Agreement expires on November 1, 2018; however, the Wastewater System is no longer in operation, and the County and Duda now desire to terminate the Use Agreement, as more particularly set forth in this Termination.

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars (\$10.00), the mutual promises and covenants contained in this Termination, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Agent hereby agree as follows:

1. **Recitals:** The recitals set forth hereinabove are true and correct in all respects and are incorporated into this Termination by this reference.

2. **Termination of the Use Agreement:** The Use Agreement, along with all rights granted therein, are hereby terminated, effective as of the Effective Date. Notwithstanding the provisions of Section 10 of the Use Agreement, the County and Duda hereby agree that the components and/or equipment of the Wastewater System remaining on Duda's property as of the Effective Date shall be the property of Duda, rather than the County, and the County hereby conveys and assigns any and all interest in such components and/or equipment to Duda, with the County no longer having any maintenance or removal obligations in connection with such components and/or equipment.

3. **Counterparts:** This Termination may be executed by the Count and Duda in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any counterpart executed and delivered by facsimile or email transmission shall be deemed an original counterpart from the sending party.

