

Meeting Date
January 27, 2015



AGENDA	
Section	Consent
Item No.	II.A.4

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

SUBJECT:	Approval RE: Interlocal Agreement with the City of Cocoa for relocation of water main in conflict with Brevard County Adamson Road Improvements required for the Central Disposal Facility's (CDF) entrance road and Scalehouse project.
DEPT/OFFICE:	Solid Waste Management Department

**Requested Action:**  
It is requested that the Board of County Commissioners (1) approve the Interlocal Agreement with the City of Cocoa for the design and relocation of the City's utilities, necessary for the improvements to Adamson Road associated with construction of the scale house and entrance road for the CDF, and (2) authorize the Chairman execute the Agreement.

**Summary Explanation & Background:**  
Improvements to Adamson Road in Cocoa associated with the new CDF Scale House and entrance road are currently being designed. The City of Cocoa has notified the County that existing utilities in the Adamson Road right-of-way must be relocated. In order to provide consistent design and efficient construction of these improvements, the City has requested that the County's design consultant for this project, CDM Smith Inc., provide design and construction management services for the utility relocation associated with the road improvements on behalf of the City. The City has agreed to pay \$15,160 for the Phase I costs for design. The City will also pay \$7,500 for Phase II, construction management costs for a total of \$22,660. The City will deposit the funding with the County prior to commencement of each phase of the project.

**Fiscal Impact:** FY14/15  
There is no cost to Brevard County for this action. Costs will be paid by the City of Cocoa.

**Contact:** Euripides Rodriguez, Solid Waste Director  
**Phone:** (321) 633-2042

Clerk to the Board Instructions: Please sign and attest three (3) copies of the Agreement and return two (2) originals to the Department.

Exhibits Attached: Interlocal Agreement with City of Cocoa.

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager, Mel Scott		Department Director: Euripides Rodriguez			
Stockton Whitten							



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972

January 27, 2015

MEMORANDUM

TO: Euripides Rodriguez, Solid West Director

RE: Item II.A.4., Interlocal Agreement with City of Cocoa for Relocation of Water in Main in Conflict with Adamson Road Improvements Required for the Central Disposal Facility (CDF) Entrance Road and Scalehouse Project

The Board of County Commissioners, in regular session on January 27, 2015, executed Interlocal Agreement with the City of Cocoa for the design and relocation of the City's utilities, necessary for the improvements to Adamson Road associated with construction of the scale house and entrance road for the CDF. Enclosed are two fully-executed copies of the agreement for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/kg

Encls. (2)

cc: Contracts Administration

**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**  
Contract Administration (Administrative Order AO-29)




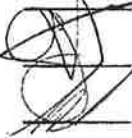

**SECTION 1**

<b>1. Contractor   Bid or Proposal:</b> City of Cocoa Interlocal Agreement	
<b>2. Fund:</b> 4010 <b>Account #:</b> 352000	<b>3. Division Name:</b> Solid Waste Management Department
<b>4. Contract Description:</b> Interlocal Agreement	
<b>5. Contract Monitor:</b> Gloria J. Harris	<b>7. Mail Stop #:</b> 81
<b>8. Department/Office Director:</b> Euripides Rodriguez	<b>9. Contract Type:</b>
<b>Action Date:</b> 30 days from entry	<b>Action Requirement:</b> Need complete data

**SECTION 11**

*The following departments must approve all CIP and Non-CIP contracts:*

**D E P A R T M E N T   R E V I E W**

<u>County Office</u>	<u>Approval</u>		<u>Initial</u>	<u>Date</u>
	<u>Yes</u>	<u>No</u>		
Gloria J. Harris-User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>		11-18-14
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		11/21-14
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>		N/A
Gloria J. Harris (Final Review)	N/A	<input checked="" type="checkbox"/>		12-30-14
Euripides Rodriguez, Director	<input checked="" type="checkbox"/>	<input type="checkbox"/>		12/30/2014

**Comments:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

AGREEMENT TO AMEND AND RENEW EXISTING CONTRACT

THIS AGREEMENT made and entered into this 27 day of January 2015, by and between Capital Seas Inc., hereinafter referred to as "Concessionaire" and the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County".

WITNESSETH:

WHEREAS, the parties hereto have previously entered into an Agreement on December 1, 2009, under Contract No. 401 ("Agreement"); and

WHEREAS, the parties hereto desire to amend and renew the Agreement, ,

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree, as follows:

1. That the Agreement previously entered into by and between the Concessionaire and the County under Contract No. 401, dated December 1, 2009, shall be amended as reflected in Attachment "A". All the terms and conditions of Contract No. 401, which is incorporated herein by this reference, not inconsistent with the provisions of this Agreement to Amend and Renew Existing Contract, shall remain in full force and effect.

2. That the Agreement will be renewed for an additional term of 36 (thirty-six) months as provided for in Paragraph 1 of the Agreement. The Agreement will be renewed with an increase of ten percent (10%) of the monthly rent as provided for in Paragraph 1 of the Agreement.


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

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY FLORIDA

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

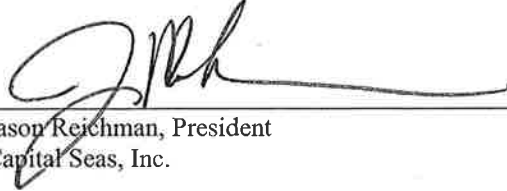
Robin Fisher, Chairman  
Board of County Commissioners

As approved by the Board on 1-27-2015

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

Reviewed for legal form and content:

  
\_\_\_\_\_  
Matthew Soss,  
Assistant County Attorney

  
\_\_\_\_\_  
Jason Reichman, President  
Capital Seas, Inc.

**AGREEMENT**

This Agreement, made and entered into this 1 day of December, 2009, by and between CAPITAL SEAS, INC., hereinafter referred to as "Concessionaire," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision to the State of Florida, hereinafter referred to as "County."

**WITNESSETH:**

**WHEREAS**, the County operates a recreational complex known as the Titusville Veterans' Memorial Fishing Pier, hereinafter referred to as "Pier," for the purpose of providing fishing activities for the general public, and

**WHEREAS**, the Pier is owned by the City of Titusville, hereinafter referred to as the "City," and operated by the County pursuant to an Interlocal Agreement, and

**WHEREAS**, the County has negotiated with Concessionaire for the operation of the food and beverage concession ~~and bait shop~~, hereinafter referred to as "Concession," located at the Pier; and

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**WHEREAS**, the County has negotiated with Concessionaire for maintenance and repair of the Pier upon completion of the final inspection, approval and acceptance of the rebuilding of the Pier; and

**WHEREAS**, operation of said Concession and Pier will mutually benefit the parties and the residents of Brevard County, Florida; and

**WHEREAS**, the County may provide parks, preserves, recreation areas, and other recreational facilities pursuant to provisions of Section 125.01 (1)(f), Florida Statutes.

**NOW, THEREFORE**, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **TERM AND RENEWAL.** The Concessionaire is hereby authorized to operate the Concession located at the Pier, a public recreational fishing pier, for the period of 60 (sixty) months, computed from the first day of the first calendar month on or after the Rental Commencement Date. The County shall deliver possession of the Concession ("Delivery of the Premises") immediately upon the date of execution of this Agreement. The Rental Commencement Date shall be the earlier of (a) the date Concessionaire initially opens for business or (b) one hundred twenty (120) days after Delivery of the Premises. In the event that the Concessionaire (a) fails to open the Concession to the public for business within one hundred twenty (120) days following Delivery of the Premises, and such failure continues for a period of ten (10) days after the County delivers written notice of such failure to the Concessionaire, or (b) Concessionaire fails to operate its business at anytime during the term of this Agreement, and such failure continues for a period of at least ten (10) days after the County delivers written notice of such failure to the Concessionaire, then the County, in addition to any other remedies available hereunder, shall be entitled to terminate this Agreement by delivery of written notice to the Concessionaire. In the event of such termination, the County shall have the option to (i) take exclusive possession of and title to the Concessionaire's fixtures (including trade fixtures), furniture, equipment, signs, improvements, additions and alterations to the extent any of these items are affixed to the premises, (ii) require Concessionaire to remove the same, at its sole cost and expense, and immediately repair any damage occasioned to the premises by reason of such removal so as to leave the premises in a neat and clean condition, or (iii) remove the same, at Concessionaire's sole cost and expense.

The County Manager or designee, as hereby specifically delegated this authority by the Board of County Commissioners, shall have the option to renew this Agreement for two (2) additional terms of 36 (thirty-six) months each, upon request of the Concessionaire received 90 days prior to termination of the current term. Each Agreement renewal will be subject to the same

terms and conditions contained herein, except monthly rent, which shall increase at the commencement of each new Agreement term by an amount equal to ten percent (10%) of the monthly rent in effect prior to such increase.

Should the City of Titusville terminate its Interlocal Agreement with the County, resulting in the County's cessation of operation of the Pier, the County's obligations under this Agreement shall be deemed to have terminated. Such termination shall not constitute a breach by the County.

**2. PAYMENTS.**

(a) The Concessionaire shall provide a cash bond in the amount of ONE THOUSAND DOLLARS (\$1,000.00), to be conditioned upon the faithful performance of all the provisions herein set forth. The cash bond shall be posted with the County at time of execution of this Agreement.

(b) Concessionaire shall pay monthly rent payments of One Thousand Five Hundred Dollars (\$1,500.00), plus any applicable sales or use tax due under state law for the rental of this property, to the Board of County Commissioners of Brevard County, Florida, by the fifth (5<sup>th</sup>) of each month to the North Area Parks Operations Manager, hereinafter referred to NAPO Manager, or designee. The first month's rent may be prorated based on the Rental Commencement Date.

(c) The Concessionaire rent for the two (2) thirty-six (36) month renewal periods will be increased as provided hereinabove.

(d) The Concessionaire, in transmitting payments to the County hereunder shall make all checks payable to Brevard County Board of County Commissioners, in care of North Area Parks Operations, 475 North Williams Avenue, Titusville, Florida 32796.

**3. ACCOUNTING PROCEDURES AND REPORTS.** All sales shall be registered on a cash register with the amount of sale visible to the public. Daily cash register tapes shall be dated and kept as a permanent record during the duration of the Agreement period. The cash register

must be furnished by the Concessionaire and shall be the responsibility of the Concessionaire. The County shall approve the type of cash register to ensure accountability purposes.

Concessionaire shall furnish to the County, at the Concessionaire's expense, a monthly attendance report in a form acceptable, as shown in Exhibit "A," to the NAPO Manager or designee, by the fifth (5<sup>th</sup>) day of each month for the previous month's business. Sales tax reports shall be made to the State of Florida.

Concessionaire shall cooperate with and provide the County, or its duly authorized representative, with any additional information or reports concerning its activities, income, revenues, expenses, and disbursements when so requested.

4. **RIGHT TO AUDIT RECORDS.** In the performance of the Agreement, the Concessionaire shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the Office upon reasonable advance notice and shall be retained by the Concessionaire for a period of three years after termination of this agreement. If material accounting discrepancies are found, the cost of any such audit shall be borne by the Concessionaire. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provision of the Florida Public Records Act, Chapter 119, Florida Statutes.

All records or documents created by the Concessionaire, or provided to the Concessionaire by the County in connection with the activities or services provided by the Concessionaire under the terms of this Agreement are public records and the Concessionaire agrees to comply with any request for such public records or documents made in accordance with Section 119.07 Florida Statutes.

5. **COPYRIGHT.** No reports, data, programs or other material produced, in whole or in part for the benefit and use of the County, under this Agreement, shall be subject to copyright by Concessionaire in the United States or any other Country.

6. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

7. **OPERATION AND MAINTENANCE.** Concessionaire shall provide and adequately arrange to offer the public a quality Concession operation consistent with good food and beverage ~~and bait shop business practices and management, maintaining a level of public~~ relations and customer service that promotes a highly favorable family-oriented atmosphere. Access to the Pier has always been free and is to remain so with no admission fee charged. Pier patrons shall be allowed to sit in the Concession area without charge or a requirement to purchase from the Concession based upon available seating and weather conditions. Concessionaire shall furnish the following merchandise and services at the Pier for the needs and convenience of the public:

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(a) Post a menu of, but not limited to, hamburgers, hot dogs, hot entrees, delicatessen-style sandwiches, chips, popcorn, candy, salads, and condiments. The Concessionaire, coordinating with the NAPO Manager or designee, will consider if the business warrants a breakfast menu. The intention is to provide a casual, family-oriented atmosphere.

(b) Explore various means of marketing with creative menu items, specials and promotions.

(c) A variety of non-alcoholic beverages and alcoholic beverages. The Concessionaire shall assist the County in enforcing the City of Titusville's requirement to prohibit alcoholic beverages being brought on the Pier by any patron other than purchases of alcoholic beverages from the concession located at the Pier. The County shall provide appropriate

signage. The Concessionaire shall call the City of Titusville Police Department if a patron refuses to comply after being informed of the requirement as posted.

(d) ~~A variety of live and frozen bait and a variety of fishing tackle for sale and rental of tackle and equipment including chrimping lights to serve the needs of the public.~~

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(e) ~~Maintain a sufficient inventory of all menu and bait shop items to satisfy the demands and needs of the public.~~

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(f) Insure that the NAPO Manager or designee is provided a current menu ~~and bait shop~~ schedule documenting all fees and charges. All fees and charges shall be competitive in nature and will not exceed the average retail prices of the same or comparable items charged by commercial establishments within Brevard County, Florida, as determined in the sole discretion of the County. Once established, no fees and charges may be changed without written approval of the NAPO Manager or designee.

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(g) Secure and maintain all licenses and/or permits required and pay when due all taxes and assessments which may be imposed or assessed by governmental units in connection with the business or operation conducted pursuant to the provisions of this Agreement and to otherwise comply with all applicable laws, ordinances, rules, fire codes, regulations or policies established by the County or any local, state, or federal governmental unit or authority. Concessionaire shall provide written evidence to the NAPO Manager or designee of current satisfactory health inspections at all times.

(h) Keep buildings and Pier premises including finger pier and parking lot clean and orderly in accordance with any applicable federal, state, and local regulatory agencies' laws or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions maintained on the premises. Brevard County Public Health Department reviews may be conducted. Final determination shall rest with the County. The Concessionaire shall provide all aspects of cleanliness in the Concession service and seating area, including porches, tables, chairs, counters, floors, and continuous removal of debris, rubbish

or litter. The Concessionaire shall provide daily janitorial services and maintenance and repair to the interior and exterior of the Concession service and seating area, bait shop, porches, finger pier, parking lot and Pier as defined by the County during the initial briefing period, prior to the execution of the contractual Agreement. The Concessionaire will be responsible for dusting the plaques related to donations for Pier repairs and leaving space for future plaques. Existing and future plaques will be installed by the County. Area for future plaques will be designated by the County. Concessionaire display areas will be coordinated and approved in advance by the NAPO Manager. Advertisements in the Concession area shall be in good taste commensurate with acceptable family-oriented environments. Advertising of other businesses not related to the Pier Concession operation such as business cards and signs are not acceptable.

(i) Maintain a "Non-Smoking" policy within the indoor service and seating areas.

(j) Service the patrons pursuant to a set schedule during all periods of the year, giving consideration to seasonal fishing and shrimping hours. This schedule shall be subject to the approval of the NAPO Manager or designee, and shall be posted at all times in full view of the public. Said schedule of service shall not be modified or altered without the written approval of the NAPO Manager or designee. A copy of any proposed revised schedule of operating hours shall be submitted to the NAPO Manager or designee at least fifteen (15) days prior to the proposed effective date of the desired changes. The Concessionaire shall not open the Concession late or close it early without the approval of the NAPO Manager or designee.

(k) Be responsible for hiring staff of high moral character that are clean in appearance and dress appropriately for public food service, and shall train Concession employees in the art of effective customer service and establish customer service procedures which will develop loyal clientele. The Concessionaire will ensure staff wears apparel acceptable to the County and approved by the NAPO Manager. All employees shall wear a polo, collared or T-shirt with the name of the Concessionaire on the shirt. No sleeveless shirts or tank tops allowed. Women may wear slacks, skirts extending to at least mid-thigh, culottes or Bermuda-length shorts with a

Titusville Veterans' Memorial Fishing Pier Concession

minimum six-inch inseam and extending to mid-thigh. Men may wear slacks or Bermuda-length shorts with a minimum six-inch inseam and extending to at least mid-thigh. Short shorts, tennis, gym or bathing-type shorts and cut-off pants or jeans are not allowed. Name tags shall be worn indicating at least the first name of the employee. The Concessionaire will ensure a drug-free work place. The Concessionaire and all employees will be subject to a Level III Background Check, as described in Exhibit "C" hereto. Employees may be disqualified on the basis of the results of the Level III Background Check. Neither the Concessionaire, nor any employee, subcontractor, agent, and/or volunteer, may perform services hereunder until that individual has satisfactorily completed the Level III Background Check. The Concessionaire shall provide to the NAPO Manager or designee a letter stating the names of employees, subcontractor, agent, and/or volunteer that have passed the Level III Background Check.

(l) Employ good public relations in a manner which is courteous and fair to the public and responsive to customer requests and complaints received by the Concessionaire, and/or the County.

(m) Cooperate fully with County officials in all matters relating to the Concession, the fishing public, and Pier patrons.

(n) ~~Operation of the bait shop may be subcontracted out by the Concessionaire,~~ however, the Concessionaire shall not enter into any agreements with other parties to delegate or subordinate any of the responsibilities or right there under except with the prior written approval of the County. The County will not deal directly with any subcontractor or sub-subcontractor or materials supplier of the awarded Concessionaire. Nothing contained in the bidding documents or any subsequent agreement with the awarded Concessionaire is intended to, nor shall it create any contractual relationship between the County, or any of its agents, employees, or representatives and any subcontractor, sub-subcontractor, supplier or vendor of the Concessionaire, but the County shall be entitled to performance of all obligations intended for the County's benefit, and to enforcement thereof, including requirements in paragraph 7(k).

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(1) Prior to award of a contract resulting from this solicitation, the Concessionaire shall furnish the County, in writing, the names, contact name, addresses and telephone numbers of any subcontractors proposed by the Concessionaire to perform any portion of the work under this solicitation.

(2) The County shall promptly reply to Concessionaire in writing stating whether or not the County, after due investigation, has reasonable objection to any proposed person or entity. Failure of the County to reply within five (5) business days shall constitute notice of no reasonable objection.

(3) The Concessionaire understands and agrees that no contractual agreement exists for any part of the work resulting from this solicitation between the County and any of the Concessionaire's subcontractors or sub-subcontractors. Further, the Concessionaire understands and agrees that the Concessionaire alone is responsible to the County for all of the work under this solicitation and that any review of subcontractors or sub-subcontractors by the County will not in any way make the County responsible to any subcontractor, nor responsible for the actions or failures of any subcontractor or sub-subcontractor.

(4) The Concessionaire shall not contract with any such proposed person or entity to which the County has made reasonable objection.

(5) If the County has reasonable objection to any proposed person or entity under paragraph 7(n)(2), the Concessionaire shall name a substitute to whom the County has no reasonable objection. Any proposed prices, rental rates and user fee rates must remain the same as originally proposed.

(o) Adhere to any and all electrical conservation policies established by the County.

(p) Is responsible for all electrical and plumbing support associated with the Concession operation. Concessionaire shall pay for all electrical, water, and sewer services for the Pier and Concession operations. Except as otherwise provided herein, this shall include all interior and exterior maintenance of the Concession building. Upon completion of the final

inspection, approval and acceptance of the rebuilding of the Pier by the County, the County will turn the responsibility of the maintenance and routine repairs to the Concessionaire.

(q) Provide appropriate trash containers for use in conjunction with the operation of the Concession. Trash containers located in the public seating in view of the public shall be kept clean and stain free. Concessionaire shall provide a dumpster for pick up and disposal of garbage for the Pier and Concession and to practice environmental trash separation by recycling cans, plastic and glass bottles, providing recycling containers for patrons' use, and arranging for transporting of such to a recycling center. The Concessionaire is responsible for properly disposing of cooking oils.

(r) Install and maintain, at its expense, all required equipment, including refrigeration equipment, stoves, grill, deep fat fryers, microwaves, sinks, ice machines and associated food and beverage preparation equipment as needed to operate the facility, tables and chairs and repairs thereof. ~~The Concessionaire agrees to install and maintain all required equipment for the bait shop.~~ This is to include any required safety or fire prevention equipment necessary for proper operations as well as maintenance and mandatory inspections of the same. Where the facility is not ventilated to handle or accommodate deep fat fryers it is the responsibility of the Concessionaire to provide for such ventilation.

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(1) The Concessionaire will be provided Concession equipment owned by Brevard County for the Concessionaire's use. A listing of County-owned equipment is provided as Exhibit "B." The Concessionaire will regularly service and maintain all Brevard County Concession equipment. The Concessionaire shall advise the NAPO Manager or designee when County equipment is being repaired and if equipment will not be repaired or is no longer required by the Concessionaire. Brevard County equipment, which is too costly or beyond repair, shall be the responsibility of the Concessionaire to replace.

(2) Brevard County Asset Management office manages all County equipment. The NAPO Manager or designee must be notified of any excess or beyond repair equipment.

The NAPO Manager or designee will then arrange for relocation or disposal of the equipment per County requirements for Asset Management. Failure to do so on the part of the Concessionaire shall result in the determination of an assessed value by the County that shall be paid by the Concessionaire.

(s) The Concessionaire is responsible for the security of the Concession area and to take appropriate measures to minimize damage when severe weather or other dangerous conditions are expected.

(t) Allow the City of Titusville up to four (4) one-day special events per year at the Pier as is required by Inter-local Agreement between the County and the City. The City may at its discretion use the patron seating area of the Concession for such events and may negotiate with the Concessionaire for food and beverage service for such special events.

(u) Accept major credit cards (VISA, Master Card). The Concessionaire shall pay all costs associated with these forms of payment. The Concessionaire may set a minimum purchase amount of ten dollars (\$10) on credit card purchases.

~~(v) Provide vending machines containing various snacks and drinks on the Pier.~~

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~~The Concessionaire has the option to provide bait vending machines. Said vending machines are to be operated and maintained by the Concessionaire.~~

(w) Cooperate with Brevard County officials in all matters pertaining and relating to the Pier and Concession operations.

(x) The County hereby authorizes the Concessionaire to request that any person violating an applicable rule or regulation leave the Concession and/or Pier. If a person remains in the Concession and/or Pier after such a request has been made, the Concessionaire shall call the Titusville Police Department.

8. **COUNTY OBLIGATIONS.** The Parks and Recreation Department Director and NAPO Manager shall administer Brevard County's interest in the Pier and Concession. The County agrees to provide as follows:

(a) Phone service for patrons in the patron eating area with long distance and toll calls blocked.

(b) Fire alarm phone line and monitoring.

(c) Maintenance, other than janitorial, of the outdoor memorials, flag pole and replacement of flags.

(d) Provide to the Concessionaire copies of "Compliments, Concerns, Evaluation Cards" submitted by customers and the Concessionaire shall provide the NAPO Manager or designee copies of such received directly at the Concession.

(e) Maintenance in a good state of repair and leak-free condition the roof and walls, and all structural portions of the roof, walls, floors and foundations of any structures on the Pier, as well as the structural portions of the Pier, including, the finger pier and the docks appurtenant thereto.

9. **IMPROVEMENTS.** The Concessionaire agrees that all requests for improvements and/or changes will be submitted, in writing, for prior approval, to the NAPO Manager or designee, the City of Titusville Planning Department, and if necessary, the Brevard County Public Health Department, or other governmental agency whose approval is needed. The Concessionaire agrees that any and all improvements and/or changes once approved will be at the expense of Concessionaire.

It is hereby mutually agreed and understood that all fixtures permanently attached to the rental property hereto shall likewise become and remain the property of the County. At the time that the County approves the improvements, the County and the Concessionaire shall agree

as to whether the improvements are fixtures, which shall remain the County's property at the end of the Agreement, or any extension of it.

The Concessionaire shall ensure that any contractor which the Concessionaire may hire to perform any construction, renovation, or repairs to the facility, shall not be entitled to file any liens, mechanic's or otherwise, against the facility involved or any County property to secure the contractor's interests or payments. Any contract which the Concessionaire signs or executes with a contractor shall include a provision which requires the contractor to waive the right to file any such liens against County property and a provision which requires the contractor to include the same waiver by any subcontractor which the contractor may hire in an agreement/contract the contractor executes with the subcontractor.

**10. INDEMNIFICATION AND INSURANCE.** The Concessionaire agrees that it will indemnify and save harmless the County and the City from any and all liability claims, damages, losses, expenses, (including attorney's fees), proceedings, and causes of action of every kind and nature, arising out of or in connection with the use, occupation, management, or control of the Concession and Pier, or any improvements thereon, or the furniture, furnishings, equipment and fixtures used in connection with the Concession. The Concessionaire agrees that it will, at its own expense, defend any and all actions, suits, or proceedings, which may be brought against the County and/or the City in connection with the Concession. The Concessionaire agrees that it will satisfy, pay and discharge any and all judgments that may be entered against the County and/or the City in any such action or proceeding. The parties agree that specific consideration has been paid for this hold harmless/indemnification agreement. Notwithstanding the above, Concessionaire shall not be liable for any claims, damages, losses or expenses caused solely by the willful or negligent acts or omissions of the County, its agents, employees, contractors and invitees, or which are the result of the County's failure to perform the County's obligations under the terms of this Agreement.

The Concessionaire further agrees to provide and maintain at all times during the term of this Agreement without cost or expense to the County or the City policies of insurance generally known as General Liability policies insuring the Concessionaire against any and all claims, demands or causes of action whatsoever for injuries received or damage to property relating to its use, occupation, management or control of the Concession and Pier or improvements thereon. Such policies of insurance shall insure the Concessionaire in an amount not less than One Million Dollars (\$1,000,000.00) for Bodily Injury, One Million Dollars (\$1,000,000.00) for Products Liability, One Million Dollars (\$1,000,000.00) for Property Damage, and either an endorsement to the General Liability policy or a separate stand alone insurance policy for the Concessionaire Liquor Liability with policy limits equal to that of the General Liability policy requirements, to cover any and all claims connected with any accident or occurrence that may arise or be claimed to have arisen against the Concessionaire. Concessionaire shall also obtain Fire Damage Liability insurance insuring the Concessionaire in an amount not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) to cover claims of any person or persons from a single or specific act that results in alleged damage to the rented premises.

Said insurance policies shall provide that the County and the City shall be entitled to thirty (30) days prior written notice of any changes or cancellation in such policies and shall name the County and the City as an additional insured.

The Concessionaire shall notify the County immediately, in writing, of any potentially hazardous condition existing on or about the Concession building.

A certificate of insurance indicating that the Concessionaire has coverage in accordance with the requirements of this Agreement shall be furnished by the Concessionaire to the NAPO Manager or designee, 475 North Williams Avenue, Titusville, Florida 32796, and to the City Manager or designee, Post Office Box 2806, Titusville, Florida 32781-2806, within ten (10) days from the date of the execution of this Agreement. The certificate shall include an

endorsement specifically providing coverage for the Concessionaire liability for indemnifying the County and the City under Section 10 of this Agreement.

All personal property housed or placed on the premises by the Concessionaire or others shall be at the risk of the Concessionaire or others, and the County or the City shall not be liable for any loss or damage to the Concessionaire's personal property located therein for any cause whatsoever. Concessionaire agrees and understands that the County or the City does not and shall not carry liability, theft, or fire insurance on the operation of these facilities to cover the Concessionaire's interest.

The Concessionaire shall provide and maintain all required Worker's Compensation and Employers Liability Insurance covering all persons conducting operations on the County's or the City's premises or on behalf of the County or the City, pursuant to the provisions of Chapter 440, Florida Statutes.

11. **ASSIGNMENT.** Concessionaire, its assigns, or representative, shall not enter into any agreements with third parties to delegate any or all of the responsibilities or rights herein set forth without prior written approval of the NAPO Manager.

Continuation of the Agreement is contingent on the continued management of the Concession by the named parties or the County may terminate this contract, in its sole discretion, if there is a change in principal(s) of the corporation.

12. **INDEPENDENT CONTRACTOR.** The Concessionaire shall perform the conditions of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship of status. Nothing in this Agreement shall be, in any way, construed to constitute the Concessionaire, or any of its agents or employees, as the agent, employee or representative of the County.

13. **DEFAULT AND TERMINATION.** The occurrence of one or more of the following events shall constitute a default by Concessionaire under this Agreement: (a) failing or refusing to

pay any amount of rent, or any other monetary obligation owing by Concessionaire hereunder, when due, where such failure shall continue for a period of five (5) days after written notice thereof from the County to the Concessionaire; or (b) the failure of Concessionaire to observe or perform any other covenants, obligations or conditions of this Agreement, where such failure shall continue for a period of fifteen (15) days after written notice thereof from the County to the Concessionaire. If the nature of Concessionaire's default is such that more than fifteen (15) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire shall commence such cure within said fifteen (15) day period and thereafter diligently prosecute such cure to completion, which completion shall not occur later than thirty (30) days from the date of such notice from the County. Any waiver by the County of a breach of a covenant of this Agreement by Concessionaire shall not be construed as a waiver of subsequent breach of the same covenant. No breach of a covenant of this Agreement shall be deemed to have been waived by the County unless the waiver is in writing signed by the County.

Upon the occurrence of one or more of the foregoing events of default, the County Manager or designee, as hereby specifically delegated this authority by the Board of County Commissioners. County, may elect to terminate this Agreement. In such event, the County may recover from Concessionaire, as damages, the following: (a) the worth at the time of award of the unpaid rental which had been earned at the time of the termination; plus (b) the worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Concessionaire proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Concessionaire proves could be reasonably avoided; plus (d) any other amount necessary to compensate the County for all the detriment proximately caused by Concessionaire's failure to perform its obligation under this Agreement, including, but not limited to, any costs or expenses incurred by the County in (i) retaking possession of the premises, (ii)

maintaining or preserving the premises after any such default, (iii) preparing the premises for reletting to a new tenant, including repairs or alterations to the premises, and (iv) any other costs necessary or appropriate to relet the premises.

Upon termination of this Agreement, the Concessionaire shall have fifteen (15) days within which to remove his/her personal property from the Pier and Concession. Any personal property not removed within said fifteen (15) day period shall become the property of the County.

The County shall in no event be charged with default in any of its obligations hereunder unless and until the County shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice to the County by the Concessionaire specifically describing such failure. If the County fails to perform any of its obligations under this Agreement and such failure is not cured within thirty (30) days (or such additional time as is reasonably required to correct any such default) as provided hereinabove, Concessionaire may, and at its option, terminate this Agreement upon written notice to the County, or Concessionaire may incur and deduct from the monthly rent the expense necessary to perform said obligation of the County.

14. **ATTORNEY'S FEES.** In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs.

15. **VENUE.** Venue for any legal action brought by any party to this Agreement to interpret, construe, or otherwise enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

16. **GOVERNING LAW.** This Agreement shall be deemed to have been executed and entered into within the State of Florida, and this Agreement and any dispute arising hereunder, shall be governed, interpreted, and construed according to the laws of the State of Florida.

17. **NOTICE.** Notice under this Agreement shall be given to the County by delivering written notice to the North Area Parks Operations Manager, Brevard County Parks and Recreation

Department, North Area Parks Operations, 475 North Williams Avenue, Titusville, Florida 32796 and notice shall be given to Concessionaire by delivering written notice to Jason Reichman, President, Capital Seas, Inc., 125 Harrison Street, Titusville, Florida 32780.

18. **UNAUTHORIZED ALIEN WORKERS.** The County shall consider the employment by the Concessionaire of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Concessionaire of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the County.

19. **PUBLIC ENTITY CRIMES.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

20. **MODIFICATION.** No modification of this Agreement shall be binding on the County or the Concessionaire unless reduced to writing and signed by a duly authorized representative of the County and the Concessionaire.

21. **FORCE MAJEURE.** Neither party shall be responsible for damages or delays in performance caused by acts of God, strikes, lockouts or other events constituting force majeure beyond the reasonable control of the parties.

22. **PAYMENT ADJUSTMENTS.** The Parks and Recreation Director may, for a period not to exceed six (6) months, negotiate a reduction in the monthly payment of rent due to Parks and

Recreation when in his or her opinion unforeseen circumstances including Pier conditions, major equipment breakdowns, and acts of Nature, warrant said reduction.

23. **COMPLIANCE WITH STATUTES.** The Concessionaire shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, State and Federal governmental bodies applicable to the Concession and Pier for the correction, prevention and abatement of nuisances or other grievances in, upon or connected with the Concession and Pier during the term of this Agreement.

24. **MUSIC PERFORMANCE.** The Concessionaire shall not use, play or perform copyrighted music without appropriate licensing or other permission. The Concessionaire shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Agreement. The Concessionaire agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.


25. **SURRENDER:** Upon the last day of the Agreement term or any renewal term, the Concessionaire shall peaceably and quietly leave the Pier and Concession in good order and repair.

26. **CONSENT:** Wherever the County's consent is required herein, such consent shall not be unreasonably delayed or withheld and it shall be deemed to have been given if the County fails to reply to Concessionaire's request for its consent within fifteen (15) business days of such request.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on

the day and year first above written.

ATTEST:

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

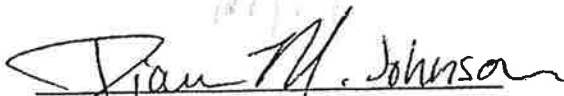
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Mary Bolin, Chairman

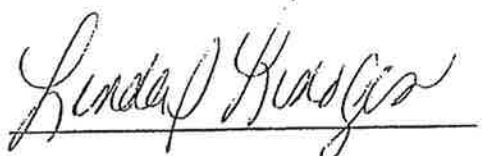
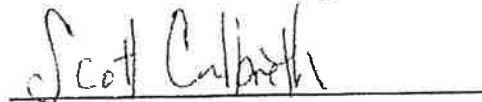
AS APPROVED BY THE BOARD ON:

DEC 01 2009

Reviewed for legal form and content:

  
\_\_\_\_\_  
Dian M. Johnson  
Assistant County Attorney

WITNESS:

  
\_\_\_\_\_  
  
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CAPITAL SEAS, INC.

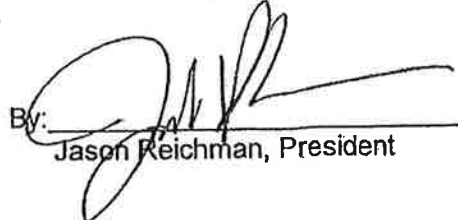
By:   
\_\_\_\_\_  
Jason Reichman, President

EXHIBIT "A" ~~strike through bait shop in chart below~~

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**RECORD OF ATTENDANCE**

Titusville Veterans' Memorial Fishing Pier

Month / Year \_\_\_\_\_

Day of Month	Food & Beverage	Bait Shop	Pier Patrons	Total
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
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25				
26				
27				
28				
29				
30				
31				
<b>Total for Month</b>				

**EXHIBIT "B"**

**BREVARD COUNTY-OWNED CONCESSION EQUIPMENT  
THE TITUSVILLE VETERANS' MEMORIAL FISHING PIER**

**KITCHEN EQUIPMENT**

1. Reach-in Refrigerator/Freezer 23 cu. ft. on Casters—True T-23 DT
2. 1000 watt Microwave Oven, 120 volt.—Amana RCS10PBDA
3. Microwave shelf—24"x 20" Stainless Steel Wall Mount Microwave Oven Shelf, Custom Fabricated
4. 4-Slice Pop-Up Toaster, Toastmaster TP409
5. Corner Counter—60"x 48" Stainless Steel, Custom Fabricated
6. Corner Shelf—60"x 48" Stainless Steel, Custom Fabricated
7. 36" Electric Griddle/Grill, Toastmaster TECG7336
8. 15" Electric Counter Model Hot Plates, Toastmaster TECHP1132
9. 2—13" Electric Fryers, Toastmaster TERCF1427
10. French Fry Warmer with Pan and Drain Grate, Hatco GRFF
11. 72" Griddle Stainless Steel Equipment Stand with 1-1/2" Backsplash on Rear and Sides, Custom Fabricated
13. 30" High x 12" Deep Stainless Steel Low Storage Shelving Unit
14. 2-48" Long Sandwich/Salad Prep units with Refrigeration Cases, True TSSU4812
16. Ice Maker with a 380 lb., 24 hr. production capability at 90 degree air and 70 degree water temperature. Manitowoc SD-04521A on B570 Bin
17. 96"x12" Stainless Steel Wall Mount Shelf, Custom Fabricated (over sandwich/salad prep unit)
18. 4-Stainless Steel Counters, 1-24"x24", 2-30"x24", 1-96"x24", with 4" Backsplash on Rear, Custom Fabricated
19. 4- Stainless Steel Shelves, 12" Deep above Counters (Item #19)
22. 96"x12" Stainless Steel Wall Mount Shelf, Custom Fabricated (Above 3 Compartment Sink)
23. Two Section Reach-In Refrigerator, 49 cu. f.,t on Casters, True T49
24. Two Section Reach-In Freezer, 49 cu. ft., on Casters, True T49F
25. 24"x144"x74" Dry Storage Wire Shelving, Powder Coated, Nexel Poly-Z-Brite Series
26. 16"x72"x74" Dry Storage Wire Shelving, Powder Coated, Nexel Poly-Z-Brite Series
27. 24"x24" Stainless Steel Cash Register Stand, Custom Fabricated
28. Undercounter Dishwasher for chemical Sanitizing with chemical Pumps, CMA LIX16
29. Exhaust Hood, Captive Aire 4524ND, with a Front Perforated Supply Plenum (PSP) Accessory, with 1 Factory Installed 10"x30" Exhaust Riser.
30. Full Height S/S Diamond Wall splash
31. Fire System #1 to include:
  1. Permit
  2. Hook-up
  3. Test
  4. Ansul-3.0/1.5, 4.5 Gallon Fire System in Utility Cabinet (includes Pre-piped Hood with Detection, Tank, Release Mechanism, Microswitches, Pull Station)

**BAIT SHOP EQUIPMENT**

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- ~~1. 96"x24" Stainless Steel Work Table with 4" Backsplash, Custom Fabricated~~
- ~~2. 72"x24" Stainless Steel Work Table with 4" Backsplash, Custom Fabricated~~
- ~~3. 72"x12" Stainless Steel Wall Mount Shelf, Custom Fabricated~~
- ~~4. Solid Door Reach-in 23 cu. ft. Refrigerator on Casters, True T-23~~
- ~~5. Solid Door Reach-in Freezer 23 cu. ft on Casters, True T-23F~~

EXHIBIT "C" replace with current AO 26

## ADMINISTRATIVE ORDER

**TITLE:** Background Investigation Checks  
**NUMBER:** AO- 26  
**CANCELS:** 2/24/06  
**APPROVED:** March 23, 2009  
**ORIGINATOR:** Human Resources  
**REVIEW:** March 23, 2012

### I. PURPOSE AND SCOPE

To establish a consistent, county-wide procedure for conducting background investigation checks.

### II. DEFINITIONS AND REFERENCES

- A. At-Risk Population – Children, elderly, disabled, and those whom can not defend themselves. Example settings in which individuals come into contact with at-risk populations:
- Daycare: senior citizen centers and community day programs for children.
  - Group Home: placements for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
  - Program activities involving children on school property.
  - Shelters: homeless, domestic violence or special needs emergency shelters.
  - Youth development programs.
  - Volunteer programs for the elderly or individuals with disabilities: Meals on Wheels, and other community/volunteer programs.
  - Library areas/programs designated for children.
  - Park areas/programs designated for children.
- B. Law Violation – Convicted, means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

NOTE: A "yes" answer to this question will not automatically bar the applicant from employment. The nature, job-relatedness, severity and date of the offense in relation to the position for which they are applying will be considered.

1

- C. Other Employment Changes – Change in employee status, such as: promotion, demotion, voluntary transfer, involuntary transfer, new hires, or other employee action where the employee or volunteer would change to a higher level of security.
- D. Recertification – Frequency which each Department/Office reinvestigates each employee's or volunteer's criminal history.
- E. Level I – Employee or volunteer who works unsupervised with at-risk population.
- F. Level II – Employee or volunteer who works supervised with at-risk population.
- G. Level III – All other employees or volunteers.
- H. F.S. 112.011 – Felon; removal of disqualifications for employment, exceptions.
- I. F.S. 943.04351 – Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

**iii. RESPONSIBILITIES**

- A. Each Department/Office Director shall establish a background investigation check procedure which insures that the guidelines in this Administrative Order are met.
- B. Each Department/Office will utilize the guidelines in this Administrative Order or will adhere to statutory/contractual requirements, whichever is more stringent.
- C. Each Department/Office shall perform the required minimum background investigation checks listed for all three security levels of applicants under final consideration for employment and volunteers.
  - 1. Level I
    - All background checks for Level II
    - Fingerprinting - send fingerprint card to FDLE.
    - National FBI Criminal Investigation check
    - Recertification of local criminal check a minimum of every five (5) years.
  - 2. Level II
    - All background checks for Level III
    - FDLE – [www.fdle.state.fl.us/](http://www.fdle.state.fl.us/)
    - Out-of-State criminal check based on past 7 years address history, or alternatively a national background check.

3. Level III

- Clerk E-Facts – [www.brevardclerk.us](http://www.brevardclerk.us).
- Florida Registered Sexual Predators and Sex Offenders – [www.fdle.state.fl.us/](http://www.fdle.state.fl.us/)
- Out-of-State sexual predators and sexual offenders checks based on past seven years address history – [www.fbi.gov/hq/cjd/cac/registry.htm](http://www.fbi.gov/hq/cjd/cac/registry.htm)
- Local Criminal Check
- Florida Department of Corrections – [www.dc.state.fl.us](http://www.dc.state.fl.us).
- Reference checks
- Prior employment check
- Educational/Licensing verification (case-by-case)
- Driver's license check (case-by-case)
- Drug testing (case-by-case)

- D. Applicants under final consideration for Level I classified positions, and employees under final consideration for other employment changes, shall be subject to the following guidelines for criminal background checks:

Consistent with F.S. 112.011, a person shall not be disqualified from employment by the County solely because of a prior conviction for a crime. However, a person may be denied employment by the County by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

For Level I employees or volunteers, the County finds a prior conviction of any of the following criminal offenses is directly related to Level I positions and will disqualify an individual from further consideration, so long as such offenses remain a felony or first degree misdemeanor:

- Child Abuse, Neglect or Abandonment
- Extortion
- Extreme Violence (Aggravated Assault/Aggravated Battery, Murder, Attempted Murder, Vehicular Homicide)
- False Imprisonment
- Hate Crime
- Indecent Exposure if Sexual In Nature
- Kidnapping
- Manslaughter
- Child Pornography
- Possession of Guns or Weapons on County Property
- Robbery
- Sale of Controlled Substance
- Sexual Offense (Lewd and Lascivious – Sexual Battery)

For prior convictions of less than 5 years the County finds the following convictions if a felony or a first degree misdemeanor are directly related to Level I positions and will disqualify an individual from further consideration. For convictions older than 5 years, the appointing authority shall carefully review and consider on a case by case basis:

- Battery/Assault
- Domestic Violence
- Misdemeanor Drug and/or Paraphernalia
- Resisting Arrest with Violence
- Sale of Alcohol or Tobacco to a Minor
- Contributing to the Delinquency of a Minor

For the following convictions, if a felony or a first degree misdemeanor, the appointing authority shall carefully review and consider on a case by case basis:

- Disorderly Conduct/Trespassing
- Domestic Violence
- Driving While Under the Influence (DUI), one incident only (more than one must show proof of rehabilitation)
- Petty Theft
- Worthless Checks
- Other Crimes

E. An appointing authority shall take the following factors relating to prior criminal convictions into consideration for all Level II and Level III applicants/volunteers:

- The relationship between the incident and the type of employment or service that the applicant will provide.
- The nature, severity, number, and consequences of the incidents disclosed.
- The amount of time elapsed since the incident(s) occurred.
- The applicant's efforts and success at rehabilitation.
- The age of the applicant at the time of the incident.

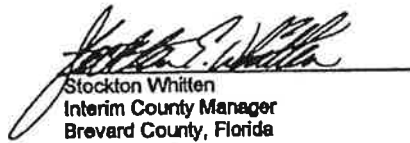
F. Typically, after the background investigation checks are satisfactorily completed, an applicant should be recommended for employment and volunteers accepted for service.

G. Upon completion of the initial criminal background screening required for Level I employees/volunteers, a recertification shall be conducted a minimum of every five years thereafter utilizing:

- Local criminal check
- Clerk E-Facts – [www.brevardclerk.us](http://www.brevardclerk.us)
- Florida Registered Sexual Predators and Sex Offenders – [www.fdle.state.fl.us/](http://www.fdle.state.fl.us/)

**IV. RESERVATION OF AUTHORITY**

The authority to issue and/or revise this Administrative Order is reserved for the County Manager.

  
Stockton Whitten  
Interim County Manager  
Brevard County, Florida